

~~P.C.~~
~~G.F.S.G.~~ 1

Judgment
6, 1964

IN THE PRIVY COUNCIL

Appeal No. 33 of 1962

O N A P P E A L

FROM THE SUPREME COURT OF GIBRALTAR

B E T W E E N

EDWARD CAMPELLO SIMPRESS LIMITED
and VOX PUBLICATIONS LIMITED
(Defendants)

Appellants

- and -

JULIUS C. SENE (Plaintiff)

Respondent

R E C O R D O F P R O C E E D I N G S

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

78529

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2, Wardrobe Place,
Doctors' Commons,
London, E.C.4.

Solicitors for the Appellants

WILLIAM A. CRUMP & SON,
2/3, Crosby Square,
Bishopsgate,
London, E.C.3.

Solicitors for the Respondent

(1)

IN THE PRIVY COUNCIL

No. 33 of 1962

O N A P P E A L

FROM THE SUPREME COURT OF GIBRALTAR

B E T W E E N

EDWARD CAMPELLO SIMPRESS LIMITED
and VOX PUBLICATIONS LIMITED

Appellants

- and -

JULIUS C. SENE

Respondent

RECORD OF PROCEEDINGS

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Dated the 10th day of September, 1962.

JOHN E. ALCANTARA

Registrar.

1.

IN THE PRIVY COUNCIL

No. 33 of 1962

O N A P P E A L

FROM THE SUPREME COURT OF GIBRALTAR

B E T W E E N

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

- and -

JULIUS C. SENE (Plaintiff) Respondent

10

RECORD OF PROCEEDINGS

No. 1

No. 1
Writ of Summons
2nd November
1960

WRIT OF SUMMONS

Ordinary Writ - Unliquidated Demand

20

ELIZABETH THE SECOND BY THE GRACE OF GOD OF
THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND AND OF HER OTHER REALMS AND TERRITORIES
QUEEN, HEAD OF THE COMMONWEALTH, DEFENDER OF THE
FAITH.

TO

Edward Campello of 14, Castle Street,
Gibraltar.

Simpres Ltd. whose registered office is
situate at 28, Irish Town, Gibraltar.

Vox Publications Ltd. whose registered
office is situate at 28, Irish Town,
Gibraltar.

30

WE COMMAND YOU, that within eight days after the
service of this writ on you, inclusive of the day
of such service, you do cause an appearance to be
entered for you in an action at the suit of

Julius C. Sene
of 32, Irish Town Gibraltar officer

No. 1

i/c Administration of the War
Department Works Organization, Gibraltar.

Writ of Summons
2nd November
1960
continued

AND TAKE NOTICE that in default of your so doing, the Plaintiff may proceed therein and judgment may be given in your absence.

Witness THE HONOURABLE MR. JUSTICE HUBERT
J.M. FLAXMAN, C.M.G., Chief Justice of Our said
Supreme Court, the Second day of November in
the year of Our Lord One thousand nine hundred
and sixty

10

N.B.- This writ to be served within Twelve
Calendar Months from the date thereof, or, if
renewed, within six Calendar Months from the date
of the last renewal, including the day of such
date, and not afterwards.

The Defendants may appear hereto by entering
appearances either personally or by Solicitor at
the Registry of the said Court, situate at the
Court House, Gibraltar.

20

The Plaintiff's claim is for against the Defendant
Edward Campello as Editor the Defendants Simpress
Ltd. as printers the Defendants Vox Publications
Ltd. as publishers of the "VOX" newspaper for
damages for libel contained in a letter signed
"G.F.W.U." addressed to the editor of the weekly
newspaper "VOX" and printed and published on page
4 of the "VOX" newspaper dated the 7th day of
October 1960.

(Signed) Isola & Isola

30

This Writ was issued by MESSRS. ISOLA & ISOLA
of Gibraltar, whose address for service is No. 3,
Bell Lane, Gibraltar, Solicitors for the Plaintiff
who resides at 32, Irish Town Gibraltar

The Defendant Edward Campello resides at 14,
Castle Street Gibraltar and is the Editor of the
"VOX".

The Defendants Simpress Ltd. whose Registered
Office is at 28, Irish Town Gibraltar are the
Printers of the said Newspaper "VOX".

40

The Defendants "VOX" Publications Ltd. whose registered office is at 28, Irish Town Gibraltar are the Publishers of the "VOX".

No. 1

Writ of
Summons
2nd November
1960
continued

No. 2

No. 2

APPEARANCE

Appearance
17th November
1960

10

Enter an appearance for the Defendants in this Action.

DATED the 17th day of November, 1960

(Signed) TRIAY & TRIAY

of No. 28, Irish Town, Gibraltar,

Solicitors for the said Defendants.

No. 3
Statement of
Claim
2nd December
1960

No. 3

STATEMENT OF CLAIM

1. The Plaintiff is and at all times hereinafter was the Departmental Civilian Officer in Charge of Administration of the War Department Works Organization in Gibraltar. The Defendant Edward Campello is, and at the said time was, the Editor of a weekly newspaper called the "VOX". The defendants Simpress Ltd., are and at the said time were, the printers of "VOX". The Defendants Vox Publications Ltd. are and were at all the said time the publishers of the said weekly newspaper "VOX". The said newspaper had a large circulation in Gibraltar where the Plaintiff resides. 10

2. On page 4 of the issue of the said newspaper dated the 7th day of October 1960 the defendant Edward Campello falsely and maliciously caused to be printed and published and the defendants Simpress Ltd. and Vox Publications Ltd. falsely and maliciously printed and published in the Spanish language of the Plaintiff and of him in the way of his said office as the Departmental Civilian Officer aforesaid and in relation to his conduct therein the words following in a letter headed "En viaje turistico" and signed G.F.W.U., of and concerning the Plaintiff, that is to say: 20

"No son estas solas las anomalias existentes en ese Departamento del R.E. Viney Quarry. Hay mas Mr. Sene escribiente principal amenaza a los trabajadores y los suspende inclusive sencillamente por cualquier reporte de los encargados sin entretenerse en averiguaciones como si todavia vivieramos en la era de los Torquemadas y los Neronos". 30

3. The said words mean and were understood to mean by the readers of the Vox newspaper :-

"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 40

still living in the era of the Torquemadas and the Neroes".

No. 3
Statement of
Claim
2nd December
1960
continued

4. The Plaintiff will further allege that in the said "Vox" newspaper some of the articles appear written in the English language and others in the Spanish Language and that the majority of the readers of this newspaper are conversant with and understand the Spanish Language.

10 5. By the publication of the said words the Plaintiff has been injured in his credit reputation and in the way of his office and employment and has suffered damages.

6. The Plaintiff claims against the Defendants and each of them: Damages

(Signed) PETER J. ISOLA.

Counsel for the Plaintiff.

DELIVERED this 2nd day of December 1960 by MESSRS ISOLA & ISOLA of 3, Bell Lane Gibraltar Solicitors for the Plaintiff.

No. 4
Defence
16th December
1960

No. 4

THE DEFENCE of the Defendants Edward
Campello, Simpress Ltd. and Vox
Publications Ltd.

1. The Defendants admit paragraph 1 of the Statement of Claim.
 2. The Defendant Edward Campello admits that he caused to be published and the Defendants Simpress Limited and Vox Publications Limited admit that they printed and published in the Spanish Language the words set out in paragraph 2 of the Statement of Claim. 10
 3. In so far as the said words consist of allegations of fact, they are true in substance and in fact; in so far as they consist of expressions of opinion, they are fair comments written and published in good faith and without malice towards the Plaintiff or at all upon a matter of public interest and importance namely: the manner in which the employees of the War Department are treated and dealt with. 20
- PARTICULARS pursuant to R.S.C. Order
19 r. 22(A)
- a) Of the words complained of, the following are statements of fact, i.e.

"..... Mr. Sene escribiente principal amenaza a los trabajadores y los suspende inclusive sencillamente por cualquier reporte de los encargados sin entretenerse en averiguaciones...."
 - b) The Defendants will rely on the matters and facts following in support of the allegation that the said words are true, i.e. 30
 - i) The Plaintiff Mr. Sene is the Departmental Civilian Officer in charge of administration of the Department Works Organisation and in this capacity has Civilian workmen employed by the War Department under his charge.
 - (ii) Pursuant to the duties of his office and employment the Plaintiff from time to time signs letters addressed to workmen employed by the War Department informing the workman 40

in question of reports made against the workman for a deficiency in his work or misconduct and threatening dismissal or suspending the workman. The said letters are written without first giving the workman a hearing, and simply on the strength of a report against the workman. The Defendants will rely on -

No. 4
Defence
16th December
1960
continued

- 10 (a) a letter dated the 12th July, 1960, addressed to a Mr. A. Matos and signed by the Plaintiff;
- (b) a letter dated the 2nd August, 1960 addressed to a Mr. H. Lopez and signed by the Plaintiff;
- (c) Two letters dated the 15th September, 1960, both addressed to the said Mr. A. Matos and signed by the Plaintiff.
- 20 (d) other letters of similar nature particulars of which are within the knowledge of the Plaintiff.

4. The said words are no libel upon the Plaintiff; they were not written or published of the character of the Plaintiff, 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.

30 5. Save for the words "sort of" appearing in the fourth line thereof the Defendants admit that the words set out under paragraph 3 of the Statement of Claim are a literal translation into the English language of the words complained of.

6. The Defendants admit paragraph 4 of the Statement of Claim.

7. Save as herein expressly admitted the Defendants deny each and every allegation in the Statement of Claim as if the same had been specifically set out herein and traversed seriatim.

(Signed) J.E. TRIAY

Counsel for the Defendants

40 DELIVERED the 16th day of December, 1960

REPLY

No. 5
Reply
24th December
1960

1. The words set out in Paragraph 3(a) of the Defence are not true in substance or in fact and the Plaintiff will further allege that the words set out in Paragraph 2 of the Statement of Claim are not in their natural or any other sense fair or bona fide comment upon any matter of public interest; they are not comment at all but false assertions as to matters of fact. And the Plaintiff will object that the defence discloses no facts which show that the publication of the said words was, or could be for the Public benefit

10

2. As to Paragraph 3 of the defence the Plaintiff will allege that the defendants were actuated by Malice in printing and publishing the words complained of

PARTICULARS OF MALICE

(a) The Defendants printed and published the said words of the Plaintiff with a reckless indifference as to the truth or falsity of the matters referred to by the said words.

20

(b) The Defendants printed and published of the Plaintiff personally comparing him to the Torquemadas and the Neros of bygone days and thus imputing to him the very basest and wicked characteristics of the said Neros and Torquemadas.

(c) The Defendants made no efforts before making the charges referred to in (b) above to ascertain who the Plaintiff was or whether he was a person who acted in fact as a Nero or a Torquemada.

30

(d) The Defendants, if they knew the procedure carried out in the War Department on question and matters of discipline which they ought to have done, knew that the allegations made against the Plaintiff were false.

3. As to Paragraph 3 (b) of the Defence the Plaintiff will allege that the procedure by which action is taken by him against workmen who are alleged to have committed a breach of regulations

40

involving suspension or dismissal is in accordance with natural principles of justice and further that all persons in the employment of the War Department have a right to be heard in respect of any offence alleged to have been committed by them and that the procedure followed by the Plaintiff at all times is in complete accord with the principles of Natural Justice aforesaid.

No. 5
Reply
24th December
1960
continued

10 4. Further as to Paragraph 3 (b) of the Defence the Plaintiff will allege that he has never suspended any person other than the aforesaid A. Matos on the 15th September 1960 and that such suspension was ordered pending the result of criminal proceedings to be instituted by the Police against the aforesaid A. Matos and will further allege that such suspension was in accordance with Civilian Staff Regulations and was a natural and reasonable precaution to take in respect of a person about to be charged with a
20 criminal offence. The Plaintiff will further allege that on the acquittal the aforesaid A. Matos was reinstated and was paid his wages as from the date of suspension.

30 5. The Plaintiff will further allege that when warning letters are sent every opportunity is afforded to a person who has been warned in respect of anything to make representations thereon and be heard. Before sending a warning letter the Plaintiff personally satisfies himself that there is at least a prima facie case against the workman in question.

40 6. As to the letters mentioned in Paragraph 3 (b) (ii) (a) and (b) the Plaintiff will allege that both Mr. A. Matos and Mr. H. Lopez were written letters in accordance with reports received from responsible officers and that they each had a right to ask for a hearing in respect of the matters referred to therein and that in fact the said A. Matos exercised that right and accepted the decision reached at the hearing of his case on 12th October 1960. The Plaintiff will further allege that he himself must be satisfied that there is a case against a workman before sending him a warning letter or commencing disciplinary action.

7. The Plaintiff joins issue with the Defendants

No. 5
Reply
24th December
1960
continued

on paragraphs 4 and 5 of the Defence and save as herein expressly admitted the Plaintiff denies each and every allegation in the Defence as if the same had been specifically set out herein and traversed seriatim.

(Signed) PETER J. ISOLA

Counsel for the Plaintiff

DELIVERED the 24th day of December 1960.

No. 6
Request for
Particulars
24th December
1960

No. 6

REQUEST FOR PARTICULARS

10

Dear Sirs,

The Plaintiff requires the following particulars of Defence delivered herein:-

1. Particulars of other letters of similar nature referred to in Paragraph 3 (b) (ii) (d) of the Defence stating the dates of such letters the names of the persons to whom the same were addressed and the nature of such letters.

We should be obliged if you would forward us the above particulars within seven days of the date hereof so as to obviate the necessity of making an application to the court which we would otherwise have to make.

20

Dated the 24th day of December, 1960.

(Signed) ISOLA & ISOLA

Solicitors for the Plaintiff

TO/

Messrs. Triay & Triay
28, Irish Town,
GIBRALTAR.

30

REQUEST FOR PARTICULARS

No. 7
Request for
Particulars
4th January
1961

Dear Sirs,

The Defendants require the following further particulars of the Reply delivered herein:

Under Paragraph 6

10 1. Particulars of the reports alleged to have been received against Mr. Matos and Mr. H. Lopez and each of them stating whether the same were verbal or in writing, if in writing identifying the document and if verbal stating the nature thereof and identifying the occasion.

2. Particulars of the allegation that Mr. A. Matos exercised his right to ask for a hearing in respect of the matters referred to therein, specifying the matter referred to, the manner and the date in which the said right was exercised as alleged.

20 3. Particulars of the decision reached at the hearing of his case on the 12th October stating the substance and effect thereof and the manner in which the said decision was accepted stating whether such acceptance is alleged to be express or implied, in writing or verbal and if implied the facts from which the implications alleged was inferred.

30 We should be obliged if you would forward us the above particulars within seven days of the date hereof so as to obviate the necessity of making an application to the Court we would otherwise have to make.

Dated the 4th day of January, 1961.

(Signed) TRIAY & TRIAY

Solicitors for the Defendants.

TO: Messrs. Isola & Isola,
3, Bell Lane,
Gibraltar.

12.

No. 8
Particulars
4th January
1961

No. 8

PARTICULARS

delivered by the Defendants pursuant to the
Plaintiff's request dated the 24th day of
December, 1960

1. The Defendants in addition to the letters particularised under paragraph 3(b)(ii) will rely on a letter dated on or about the 12th July, 1960, addressed to one Jose Martin Moreno and signed by the Plaintiff.

10

2. The Defendants will further rely on the letters referred to in paragraph 5 of the Reply written to workmen whose names are unknown and on dates unknown to the Plaintiff until after discovery.

Dated the 4th day of January, 1961.

(Signed) TRIAY & TRIAY

Solicitors for the Defendants

TO: Messrs. Isola & Isola
Solicitors for the Plaintiff.

20

PARTICULARS

No. 9
Particulars
12th January
1961

Sir,

With reference to your letter dated 29th December 1960 and your letter dated 4th January 1961 the following are the particulars requested.

A. Under Paragraph 2 (b) of the Reply:

10 The characteristics imputed to the Plaintiff in so far as he is compared to Nero are: his tyrannical rule,

his cruel despotism and his complete disregard of and contempt for principles of natural Justice.

and in so far as he is compared to Torquemada are:

his excessive severity and tyrannical methods as the first inquisitor General of Spain and his disregard for principles of natural justice in his dealings with accused persons.

B. Under Paragraph 6 of the Reply:

20 1. In regard to Mr. A. Matos the report received was a verbal one on the 12th July from Mr. Bainbridge, Garrison Works Officer. The report concerned his poor output of work and his insolence to the aforesaid Mr. Bainbridge on that date.

30 In regard to Mr. H. Lopez the report received was dated 27th July 1960 was in writing and was made by Mr. A. E. Blois Clerk of Works. The report concerned the late attendance of the said H. Lopez at his work on the 4th July 1960, 13th July 1960 and 22nd July 1960.

2. The said A. Matos soon after receiving the letter dated 12th July 1960 aforesaid through his Trade Union representative one Morello sought and obtained a hearing in respect of the warning letter aforesaid and the matters referred to therein.

No. 9
Particulars
12th January
1961
continued

3. The decision reached at the hearing which took place on 10th October 1960 and not 12th October 1960 as alleged in Paragraph 6 of the Reply was that the warning letter had been justified and that the allegations contained in the aforesaid letter of the 12th July 1960 were true in substance and in fact. The said A. Matos and his friends one Luque and one Netto shook hands with Mr. S.H. Barr the Area Works Officer and expressed no disagreement with the decision either at the time or subsequently.

10

DATED the 12th day of January, 1961.

(Signed) ISOLA & ISOLA

Solicitors for the Plaintiff

To/

Messrs. Triay & Triay,
Solicitors for the Defendants,
28, Irish Town,
Gibraltar.

No. 10

ORDER dated 13th February, 1961

MONDAY the 13th day of February, 1961

Before the Honourable Mr. Justice Hubert J.M.
Flaxman, C.M.G., Chief Justice.

No. 10
Order
13th February
1961

IN CHAMBERS

UPON HEARING the Solicitors for both sides
IT IS ORDERED that:

- 10 1. The Defendants deliver to the Plaintiff at
least 14 days before the date of trial particulars
of the "other letters of a similar nature"
referred to in paragraph 3(b) (ii) (d) of the
Defence, and that in default paragraph 3(b) (ii)
(d) of the Defence be struck out.
- 20 2. The words following, that is to say "And the
Plaintiff will object that the Defence discloses no
facts which show that the publication of the said
words was, or could be for the Public benefit"
being the second sentence of paragraph 1 of the
Reply be struck out.
3. The Defendants be at liberty to deliver to
the Plaintiff the interrogatories in writing
attached hereto initialled by the Registrar and
that the Plaintiff do within ten days answer the
said interrogatories in writing by affidavit.
4. That the costs of and incidental to this
application be costs in the cause.

(Signed) JOHN E. ALCANTARA

REGISTRAR

No. 11
Interrogatories
8th April 1961

No. 11

INTERROGATORIES

On behalf of the Defendants for the examination of the Plaintiff pursuant to the Order herein dated the 13th day of February, 1961.

1. Do you not pursuant to the duties of your office and employment from time to time sign letters addressed to workmen employed by the War Department informing the workman that he has been reported for a deficiency in his work or misconduct? 10

2. If yes, do not such letters (a) usually or ever contain threats of dismissal in the event of repetition of such deficiency or misconduct and

(b) Do they sometimes or ever contain notice that the workman has been suspended or dismissed?

3. (a) To what particular persons being workmen employed by the War Department and on what dates and in what circumstances have you written letters of the nature described above under No. 1 or No. 2 (a) or 2 (b) pursuant to the duties of your office or employment? 20

(b) Which are the letters to which paragraph 5 of the Reply refers and to whom were they sent and on what dates?

4. Have you before writing any such letter or letters given the workman to whom it was addressed an opportunity of answering the charge therein made against him and if so name the workman and identify and describe the opportunity of answering the charge afforded to the workman. 30

The Plaintiff is required to answer all the above interrogatories.

(Signed) TRIAY & TRIAY

DELIVERED the 8th day of April 1961 by MESSRS. TRIAY & TRIAY of No. 28, Irish Town, Gibraltar, Solicitors for the Defendants

No. 12

ANSWERS TO INTERROGATORIES

No. 12
 Answers to
 Interrogatories
 20th May 1961

The answers of the above-named Plaintiff Julius C. Sene to the interrogatories for his examination by the above named Defendants.

In answer to the said interrogatories I Julius C. Sene make oath and say as follows :-

Interrogatory No. 1

10 I do but all letters signed by me are signed by me on behalf of the Command Works Officer.

Interrogatory No. 2 (a)

No. My letters do not threaten workmen. They merely state the offence reported and contain a warning that consideration will be given to recommend dismissal if there is a repetition of the offence.

(b)

20 They never contain notice of dismissal. They may contain notice of suspension but there has only been one occasion when I have signed a letter of suspension and that was in the case of Mr. A. Matos referred to in the pleadings.

Interrogatory No. 3 (a)

30 I am not in a position to answer this interrogatory as the relevant documents are not in my possession or power nor is access granted to me to them for the purposes of this action for the reasons set out in a letter dated 30th January 1961 and written to me by the Command Secretary and disclosed in the Affidavit of Documents sworn herein on the 12th day of April, 1961. I can however state positively that I have in the course of my duties signed other letters of Warning other than those referred to in the pleadings although I have only during my period of office signed one letter of suspension on behalf of the Command Works Officer and that was in the case of Mr. A. Matos aforesaid.

No. 12
Interrogatories
20th May 1961
continued

(b)

The letters referred to in Paragraph 5 of the reply are the warning letters which are signed by me on behalf of the Command Works Officer from time to time. Particulars of these letters cannot be given for the reason stated in subparagraph (a) above.

Interrogatory No. 4

Yes. In serious cases of default or misconduct or cases of a repetition of a minor offence after a final warning which might involve loss of pay or dismissal the workman is first asked for an explanation in writing of his alleged conduct. Further steps that may be taken in the matter depend on the explanation that he gives. In all other cases in which it is not customary to impose a penalty, I as Officer i/c Administration carefully examine the report received, and if it is evident without any doubt that there is a prima-facie case against the workman, I send a warning on behalf of Command Works Officer to the workman regarding the offence and of the consequences if a repetition occurs. On receipt of the warning the workman is entitled and expected if aggrieved to make an explanation in writing of his conduct or ask for a hearing of his case either personally or through his Trade Union, when the matter is finally decided. The workman always has an opportunity of being heard if he considers the letter of warning unjustified. There are instances of both these procedures but I cannot give particulars of instances, other than in the case of Mr. A. Matos as I have no access to the files for the purposes of this action for the reasons stated already.

Particulars of the opportunity given to Mr. A. Matos of answering the charge made against him are contained in Paragraph 6 of the

Reply delivered herein.

SWORN by the within-
named Julius C. Sene }
at the Registry of } (Signed) J.C. SENE
the Supreme Court of }
Gibraltar this 20th }
day of May 1961 }

No. 12
Answers to
Interrogatories
20th May 1961
continued

Before me,

(Signed) Arthur Pardo

10 Deputy Registrar (Ag.)

Answers to Interrogatories delivered on behalf of
the Plaintiff by Messrs. Isola & Isola of No. 3
Bell Lane Gibraltar his Solicitors

No. 13
Amended Defence
15th November
1961

No. 13

AMENDED DEFENCE

Amended pursuant to Leave granted by the Honourable Mr. Justice H.J.M. Flaxman on the 14th day of November 1961.

The Defence of the Defendants Edward Campello, Simpress Ltd. and Vox Publications Ltd.

1. The Defendants admit paragraph 1 of the Statement of Claim.

2. The Defendant Edward Campello admits that he caused to be published and the Defendants Simpress Limited and Vox Publications Limited admit that they printed and published in the Spanish language the words set out in paragraph 2 of the Statement of Claim. 10

3. In so far as the said words consist of allegations of fact, they are true in substance and in fact; in so far as they consist of expressions of opinion, they are fair comments written and published in good faith and without malice towards the Plaintiff or at all upon a matter of public interest and importance namely: the manner in which the employees of the War Department are treated and dealt with. 20

PARTICULARS pursuant to R.S.C. Order 19 r.22(A)

a) Of the words complained of, the following are statements of fact, i.e.

"....Mr. Sene escribiente principal amenaza a los trabajadores y los suspende inclusive sencillamente por cualquier reporte de los encargados sin entretenerse en averiguaciones...." 30

b) The Defendants will rely on the matters and facts following in support of the allegation that the said words are true, i.e.

(i) The Plaintiff Mr. Sene is the Departmental Civilian Officer in charge of administration of the Department

Works Organisation and in this capacity has Civilian workmen employed by the War Department under his charge.

No. 13
Amended Defence
15th November
1961
continued

10 (ii) Pursuant to the duties of his office and employment the Plaintiff from time to time signs letters addressed to workmen employed by the War Department 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. The said letters are written without first giving the workman a hearing, and simply on the strength of a report against the workman. The Defendants will rely on -

- 20 (a) a letter dated the 12th July, 1960 addressed to a Mr. A. Matos and signed by the Plaintiff;
- (b) a letter dated the 2nd August, 1960 addressed to a Mr. H. Lopez and signed by the Plaintiff;
- (c) Two letters dated the 15th September, 1960, both addressed to the said Mr. A. Matos and signed by the Plaintiff;
- (d) other letters of similar nature particulars of which are within the knowledge of the Plaintiff.

30 4. The said words are no libel upon the Plaintiff; they were not written or published of the character of the Plaintiff, 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.

40 5. The Defendants do not admit that the words set out in paragraph 3 of the Statement of Claim are a literal translation into the English language of the words complained of and will allege that the following words are 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

No. 33
Amended Defence
15th November
1961
continued

more. Mr. Sene chief clerk threatens the workmen and even suspends them simply on any report from those in charge, without spending time in investigation as if we still lived in era of the Torquemadas and the Neros".

6. The Defendants admit paragraph 4 of the Statement of Claim.

7. Save as herein expressly admitted the Defendants deny each and every allegation in the Statement of Claim as if the same had been specifically set out herein and traversed seriatim.

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(Signed) J.E. TRIAY

Counsel for the Defendants

DELIVERED the 15th day of November 1961

PLAINTIFF'S COUNSEL'S OPENING

1960 S. No. 29

No. 14
Plaintiff's
Counsel's
Opening
13th November
1961

13th November 1961

B E T W E E N JULIUS C. SENE (Plaintiff)

- and -

EDWARD CAMPELLO
SIMPRESS LTD.
VOX PUBLICATIONS
LTD. (Defendants)

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Claim for damages for libel - with special jury.

P. Isola for plaintiff.

J.J. and J.E. Triay for defts.

Jury called, empanelled and sworn.

To stand down Oscar Prescott.

James Garbarino is elected Foreman.

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Isola: Libel. Article in Vox. Year ago.
Article in Spanish. "Touristic journey".
Letter to Editor. Signed G F W U. Trade Union.
Not a defendant to action. Protection in law.
S.19 (1) T.U. & Disputes Ord. Cannot be sued in
tort. No need to join. Publication to third
person necessary. Newspaper article here. Wide
circulation. Admitted. Editor is first defendant.
Civil responsibility of editor, publisher and
printers. Equal responsibility in law. Freedom
of press. Brings responsibility. Libel at own
risk. Defence of fair comment. Privilege not
peculiar to press. Position of plaintiff. 700
workers within jurisdiction. Public Officer. Not
politician. Gatley, p.16. Defamation of
character. Clear case. Real issue "fair comment".
Question of translation. In dispute. Notary
public to be called. (Copies of article put in
Spanish & English) Original to be put in evidence.
No following article appeared. Plaintiff will

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No. 14
 Plaintiff's
 Counsel's
 Opening
 13th November
 1961
 continued

give evidence of his duties etc.

Supported by other evidence. Statements injurious to plaintiff. Would be unfit to hold job. Apology and damages demanded. (Bundle of agreed correspondence put in). Letter of 12.10.60. (Ex. A 10). No apology. Remedy damages. Letter of 22.10.60. (Ex. A 15). Vox cannot disclaim even if not in agreement. Agrees matter of public interest. Explanation offered no satisfaction to plaintiff. Reply of 2.11.60 (Ex. A 16). Not acceptable. Draft apology submitted. Writ issued on 8.11.60. Interlocutory proceedings. (Copies of pleadings handed to jury). Malice not to be proved. Damages asked against all defendants. Defence on 16.12.60. Defence of fair comment. Facts relied on. Justification. Truth of statements. Fair comment. Statements of fact true. Comment fair. No fair comment if basis untrue. Interpretation of words used. Reasonable meaning. Involve reflection on character. Publication admitted in language generally understood.

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Sutherland -v- Stopes (1925) A.C.62. Fair and honest comment. Malice, or exceeds bounds of fair comment. Test of 1950 case. If truth of facts accepted. Extreme language. Intent to injure plaintiff. Comment coloured by malice. Nero & Torquemada. Orr -v- Silverbeck. Names well known in history. Matter for judicial notice. Plaintiff has signed one letter of suspension only. Matters dealt with in Reply. Particulars of letters asked for (No. 6 in record). Reply to request Particulars given (No. 8 in record). Further particulars (No. 9 in record). Particulars. Summons for directions. Interrogatories to plaintiff and his answers.

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PLAINTIFF'S EVIDENCE

No. 15

JULIUS C. SENE

Plaintiff's
Evidence
No. 15
Julius C. Sene
Examination

10 Julius C. Sene on oath. Plaintiff. W.D. employee.
Since 1950. Dept. Civilian Officer i/c Admin.
Equivalent to Ex. Officer U.K. Ranks as Captain.
Charge of all documentary of Labour Force. Formerly
R.E. Now civilianized. Transferred in Nov. 1959
from C.E.P.O. Pay Officer for whole of W.D. labour
force. Responsible for about 750 men. 75%
Spaniards. From Campo area. Deal with records,
statistics, permits etc. All paper work. Not day
to day work or discipline. Other duties. Supervise
a work section, finance section, Central Registry.
11 clerks and four typists. All clerical. Also
accounting officer, stores, equipment, transport.
Responsible to Area Works Officer. Civil Engineer.
2 1/6 of organization. He responsible to Command
Works Officer. Responsible to Governor. October
20 7, 1960. Read Vox. Article entitled Touristic
Journey. In Spanish. First of a series. Further
interest in Vox. Articles did not continue.
(Identifies copy of Vox) Ex.1. Viney Quarry a
section of my department. Article referred to me.
Personal attack. Untrue and libellous. Astonished
by attack. Whole article inaccurate and false.
No truth in allegations. Not a tyrant. Nothing
in common with Torquemada or Nero. Office open to
help any workmen. Manner, I carry out duties
30 referred to in article. Only disciplinary action
I have taken relates to typists and clerks etc.
Working immediately under me. Sit in judgment as
officer in charge. Never sat in judgment on others.
Not my duty. W.D. organization. H.Q. Engineers
House. Workshop for mec. & elec. work. Distilling
of water. Six Clerks of works in yards devoted to
building trade. Three Garrison works officers for
each two yards. Civilians. "Yes and no".
Sometimes a military man in organization. Sup.
40 Engineer in charge of workshops and distillery.
Equated as Captain. Responsible to C.W.O. each
installation has one clerk of works, one foreman
and a number of gangers and chargemen. Each
officer responsible for day to day work, conduct
and discipline. They are "C.O's". If workman
commits offence officer i/c has to deal with it.

Plaintiff's
evidence
No.15
Julius C. Sene
Examination
continued

Disciplinary procedure. Straightforward. Civilian staff Regns. W.O. Army Council and local orders. I am responsible to see not deviated from. Offences in W.D. classified. Major or minor. Minor includes drinking, skylarking, cheek. Leaving without permission. Dealt with by officer i/c installation. Report from superior or own observation. Listens to accusation and calls for worker. Opportunity to state case. Must do so. In minor offences Garrison W.O. listens to accused and any witnesses. If satisfied and first offence admonishes and warns verbally about future conduct. Second offence same procedure applies. If case proved matter is reported to me by the officer. We discuss matter fully (officer and self) and if I am satisfied of contravention and of prima facie case I send a warning letter to offender signed for Cm. Works Officer. Matter discussed fully by us. For third minor offence same procedure followed. I then send a final warning. If further offence same procedure and case considered a serious offence. After written warning workman has a right which we expect him to exercise. Hearing with Area Works Officer - the "boss". I arrange hearing. Number of cases of this. Matos such a case.

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Adjourned until 3 p.m.

No. 16

C.E. PRESCOTT

Plaintiff's
Evidence
No. 16
Cecil Eric
Prescott
Examination

3 p.m. Hearing resumed. (Evidence interposed)

Cecil Eric Prescott on oath. J.P. and Notary Public. Experienced translator. Frequent English-Spanish to Spanish-English. Spanish article in Vox. Translated it. Original produced. (Ex. 2). True and faithful translation.

10 CROSS-EXAMINED:- My mission to translate literally consistent with good English. No one fixed way of translating. "Improvement" could be "rectify", "to prove something." Regard to context of article. "Reparation" does not apply. "Simpatico.....punto". "Tear to bits". "To take apart". "To cut up". "To dissolve". "To chip". All dictionary meanings. Could mean "sift" or "examine minutely". "Chanchullos" a dictionary word. Unlawful handling or management. Not a "wangle". A sharp practice. May be used by Gibraltarians as "wangle". My mission is to translate. "Chico" is small official. "Small fry". "Small man". "Opposite factions" is accepted translation of "tirios". Quote from dictionary. A metaphor. Tyre and Trojan if taken word by word. "Opposite factions" in context. "Outlook" could be "panorama". Omission of "public opinion" an error. "Inclémence" is in plural in the Spanish. Same meaning. Spanish uses eras of Neros and Torquemadas. Could not be days of Inquisition and Rome. Article uses the plural. "Without bothering" could be "without spending time". A person in charge does not mean a foreman. "Encargados" any person in charge "is translation of chargemen" used later also. "Daggers" in singular in the Spanish. Final sentence of article. "Public vengeance". "Anyhow" could be "all told". "Vengeance" my dictionary translation. Not "atonement".

Cross-
Examination

40 Re-Examined: "To public vengeance" is correct. Public may take steps to stop. Not "atone". My translation is a fair and faithful and exact translation. A chargeman is a man in charge of a gang of men. Foreman above a chargeman. Lowliest man in command. A "charge-hand".

Re-Examination

Plaintiff's
Evidence
No. 16
Cecil Eric
Préscott
Re-
Examination
continued

Later use of word confirms my translation. Proper translation of a Spanish plural may be in singular in English. "Buenas noches". Nero and Torquemada should be in singular in English translation. "Outlook" and "panorama" have similar meaning. "Opposite factions" a proper translation of the Spanish. "Chico" can mean "small man" "small fry". Not physical in size or stature. Small in scale of employment. "Sharp practice" a dictionary word. "Tearing to bits" difficult to translate.

No. 17

JULIUS C. SENE

Plaintiff's
Evidence
No. 17
Julius C. Sene
Examination
continued

Exam of plaintiff continued:- Serious offences. Only C.W.O. has authority to deal with these. Dismissal, loss of pay. Officer would report to me. I inform superiors. Must be officer i/c installation. He not empowered to judge case. I prepare statement to offender in which charge is set out. Man given 48 hours to reply, stating
10 may consult trade union officials before reply. They do this. Clear from letters. If charge disputed offenders may make representations to C.W.O. or A.E.W.O. Never the immediate superior. Employee is allowed to have a friend or colleague to assist and speak for him. Usually a T.U. official. Statements are taken down, usually by me. Word by word. Employee asked to sign statement. C.W.O. decides case. Dismissal. No
20 one in organization has power. C.W.O. can recommend Not always accepted. Powers with CEPO. Final warning letters. If more than six months have elapsed warning is void and no dismissal follows. Suspension only by C.W.O. When criminal proceedings pending suspension is imposed. By regulation. No letter to issue without Head of Est. instructions. I should only sign after discussion and decision by C.W.O. If suspended worker proved innocent he is reinstated and paid
30 full wages. No black mark. I am responsible for letters of warning etc. Paper work my province. Satisfy myself that regulations broken after discussion. Officers must see and hear accused before I act. Never get direct report from ganger or chargeman. Bad time-keeping an offence. First offence investigated by office. Clock cards provide own evidence. If I have a good reason should report it to chargeman. Offence must be persistent for letters of warning. When workman gets warning letter he can ask for a hearing and
40 gets it. No truth in article. Never threaten. Letters of warning not a threat. Letter of warning to Matos referred to. (Number 1. of agreed correspondence) (Ex. A.1.) Typical letters. Letter to Lopez referred to. (Ex. A.2.). Headed "final warning". Filed. Mark against workman. "Warning", a technical word. Before writ considered letter (Ex.A.15.). Unsatisfactory.

Plaintiff's
Evidence
No. 17
Julius C. Sene
Examination
continued

Personally responsible to see letters of warning in order. To protect myself and C.W.O. Fair system to employer & employee. Drafted apology myself. Letter of 12th July referred to in Defence. Sent by me. After report from G.W.O. (Beamish). Insolence and poor output. On 11th July Matos and a Mr. Moreno, mason repairing a wicket-gate pillar in Europa Rd. Knocked off by lorry. Sent on morning of 11th. Three hours' work. C. of works estimate. Took all 11th & half May 12. Still unfinished. C. of W. complained to G.W.O. & latter went to site. Found men not working. Job important. Addressed Matos about output. Matos said "If you not satisfied, I am". "You see me now" in answer to another question. G.W.O. annoyed and came to see me. Reported and discussed it. Answer "Not quite in the book". We agreed to send a written warning as a minor offence. Both of them for poor output. Warnings handed to them. They signed copies to admit receipt. Two days later Morello, Secy. of G.F.W.U. came to see me. On behalf of Matos re warning. Morello wanted to speak to me. I told Morello Matos could have a hearing with Asst W.O. Not with me. Morello said would consult Matos & later said Matos agreed to see A.W.O. I arranged for hearing the following Monday 2 p.m. Hearing could not take place. Bainbridge had a heart attack and taken home. I explained and said would fix a fresh date. B. went on leave. Expected hearing on return. Seriously ill on leave. Away and in hospital for a long time. Certified fit on 10.10.60. Then arranged for hearing that afternoon. First opportunity. Lucas & Netto with Matos. Both officials of G.F.W.U. Came as friends. Minute was made of hearing. In bundle (Ex.A.23) signed by myself and Mr. Barr. Result of hearing was that warning should stand. No complaint from Matos who shook hands with A.W.O. No request from Moreno for a similar hearing. Lopez case. Final warning. Three mornings before. Report from G.W.O. late three times in July. I checked previous warnings also enquired if man actually late. Checked the man's clock cards. In fact had been late 18 times. Not involving loss of pay. That three times only. Late once in June. Thirteen times in May. In April five times in 7 days. Sent him a final warning. He signed. Did not ask for a hearing. Matos: Second letter. Report by G.W.O. Searched by Gibraltar Security

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Police. Ruler found on him. Asked to explain. Not satisfactory. Security Police informed G.W.O. action would be taken. G.W.O. reported to Head of Est. C.W.O. sent for me. G.W.O. there. Case explained and discussed C.W.O. directed me to suspend Matos when I heard he was going to be charged by Civil Police. Some time elapsed. Told date when M. would be charged. A Wednesday. Following Thursday of incident. At 4.30 p.m. rang Security Police for confirmation of charge. Confirmed and I prepared letter of suspension. Sent to C. of W. where M. worked for delivery the next morning. Next day (15th) at about 9.30 a.m. Telephone call told Matos had not been charged. Reported new situation to C.W.O. He ruled suspension should stand, with amended wording. Matos subsequently charged and acquitted. After acquittal Matos reinstated and paid full wages. On 7.10.1960 at about 3.30 p.m. Date of libel. In fact reinstated preceding Monday. Conference with C.W.O. G.W.O., and self about future employment for Matos. Put in charge of his brother in brother's gang. Matos resigned shortly afterwards.

Plaintiff's
Evidence
No. 17
Julius C. Sene
Examination
continued

(Translation of Article). Windmill Hill. Never more than 190 men there. Conditions of Factories Ordinance satisfied. Personal experience of paying conditions. Paid myself at Quarry. Men gathered in carpentry shop when I did it. Allegations re lower part Europa have never happened. Our yard at Rosia until July 1960. Paid at Rosia. Amalgamated July 1960. No rain after that before date of article. Cooper a chargeman of works. Not in charge. G.W.O. in charge. CEPO overlooks Trafalgar Cemetery. Water-closets statements completely false. Duty to inspect. Two W.C's and one urinal in action. Two others for Supervisors etc. Only few workers in yard during the day. About 30 men in October 1960. Yard "strewn" with lockers. Lockers to waste. Men preferred to use food boxes for storage. More lockers than necessary. World wide practice to give carpenters allowance for their tools. Wear and tear etc. Masons not paid as matter of practice. Few tools. Little maintenance required. World wide practice.

Adjourned until 10.30 a.m.
14.11.1961.

No. 18
Application by
Defendants'
Counsel
14th November
1961

No. 18

APPLICATION BY DEFENDANTS' COUNSEL

Application by J.E. Triay.

Amendment of defence. Para 5. Translation "in charge" and "spending time". Arises from Prescott's evidence. Personality of person making report. Refers para. 3. (ii) also. Order 28 rule 1. No prejudice to plaintiff. Real question in controversy. No damage. Isola opposes. Change after hearing evidence. No good reason. Necessity apparent long ago. Issues in action. Fair comment. Proof of truth of facts. Not a minor amendment. Scandalous.

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Amendment allowed. Any costs thrown away to be borne by defendants in any event.

PLAINTIFF'S EVIDENCE (Continued)

No. 19

JULIUS C. SENE, Plaintiff

Plaintiff's
Evidence
No. 19
Julius C. Sene
Examination
continued

Jury return.

Julius Sene: exam. continued. A clerk of works or a G.W.O. belong to official side and cannot be members of the Trade Union. Neither the supervising engineer. Highest job in department G.E.L. delegate can hold is foreman. Or a chargeman or charge hand or ganger. Delegate cannot be higher than a foreman. Bainbridge & Captain Dyer are not now in Gibraltar. Former was G.W.O. And Dyer too. Letter to Triay & Triay should be dated 5.10.60. Not 15.10.60. (Ex. A.14). A Saturday. Not a working day. Matos did not collect on 6th. Very few warning letters between 1958, and 1961.

CROSS-EXAMINED:-

Do not sit in judgment on employees. Only Head of Est. can take disciplinary action. Can delegate. Delegate must report back. Civilian Staff regs. Basis of disciplinary procedure. We can improve. Not go against spirit of regs. If helpful to the man. e.g. warnings. Warnings used in future cases of misconduct. I am i/c records. Send out warning letters. No record of first verbal warning. Procedure now changed. Minor. No record unless come to me. Not then the judge. Discipline not covered by s.70 of Regs. By s.72. Agrees to wording of regn. (Read by Counsel). Reg. says "only head of establishment". More than that. Later staff regulations. Local regulations applied too. Civilian Employees Orders. Para. 1 (a) relates to local regulations. Orders relate (inter alia) to minor offences. It relates to disciplinary procedure. Until a matter comes to me it is not on the record. I act for Head of the Establishment. Dismissal a serious charge. Procedure followed to the letter in serious offences. For minor offences procedure is as Civilian Employees Orders. Para. 4 deals with warnings. Adverse report a disciplinary matter. M. is an industrial employee. Different procedure for non-industrial employees. Employees can

Cross-
Examination

Plaintiff's
 Evidence
 No. 19
 Julius C. Sene
 Cross-
 Examination
 continued

understand regulations. No inconsistency between Regulations and Orders. No reason for minor offences to go to CWO. Workmen heard and judged by own officer as they are entitled. Minor offenders can ask for hearing after warning. I only work with Civilians. Familiar with certain Army procedures. Minor offences dealt with in accordance with the Order. Order addressed to Head of establishment. Head of Establishment must have certain powers to delegate. Could not possibly do everything himself. Has a charter. Concerning delegation. S.440 deals with inefficiency. Power exercised by CWO. I sign for him. Matos case. His officer saw him. A Captain. Caught by Bainbridge. Nobody else saw him. Bainbridge came to me. "Not in accordance with the book". M. said "See me now". Whole case "too ridiculous for words". Report from a responsible officer. Matos had a record. His companions had not. In Sept. had not decided that Matos ought to go. Warning letter on 12th July. Asked for an interview with me. Dealt with it in accordance with regulations. Asked to see me through Morello. My doors open to workmen on all matters if they come themselves. Had to arrange interview with A.W.O. my next superior. Have not seen the "charter". Know what a charter is. Have seen CEPO charter. Arranged M. interview for the 18th July to suit Bainbridge's availability. In case Bainbridge was wanted to give evidence. Not in fact present at meeting. In office next door and available. Men did not ask for his appearance. Did not say had had heart attack and better not be called. "Vox" issued on 7th Oct. a Friday in afternoon. Read it at about 7 p.m. on return home. Leave office at about 5.15 p.m. Message sent re interview the following Monday. Matos a long outstanding matter. Know a man called Peliza in Viney Quarry. Complaint of being assaulted on Christmas Eve by someone called Garese. Was indignant. Told him to go first to his own officer. May have mentioned his legal adviser. Said would also speak to his officer about it. Inefficiency is not an offence. Not matter of conduct. Dismissal implies misconduct. Discharge does not. Letter to Moreno (Ex.A.21). Depends what "inefficiency" means. Slackness and malingering a different matter. Civilian Staff Regns not a fair

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criterion. There are other Regulations. C.S. Regns. alone will not be a correct criterion. Departures are for benefit of the workers, never otherwise. Reg. 73 covers question of suspension. The Reg. holds good. In public interest to deal with offences against W.D. property. Even of small value. Prosecution out of our hands. Normal to suspend in W.D. for unlawful possession or criminal offence. Power exists. Once police act practice is suspension. Reg. not disregarded. In all criminal proceedings it is considered in public interest to suspend. I agreed with C.W.O's action. Proper and in the public interest. Result was an acquittal. A serious charge. Only acquainted with one suspension. The Matos case. Matos interviewed by a "Major". On the first day an opportunity occurred. Moreno did not say "You can see me now". Did not protest or join forces with Matos. "Encargados" not an expression to describe an Engineer Officer. Would not be used in that connection. It can never mean amongst workmen an engineer. Only a chargeman, ganger, or at the most a foreman. Not even a Clerk of Works. Natural and ordinary meaning is "in charge of". "Person in charge". Do not use castilian in Gibraltar. Meaning very different in context. Article is "adorned" by some phrases. I know Campello. No personal dispute with him. Should not have had spite against me on 7th Oct. Know of no reason why he might have had. Have to protect my own character. Vindicate my name. En passant shall vindicate my employers. A different issue. Would not work with unfair Regulations. They could be criticised without affecting my personal character if my name is not mentioned (referred to letter Ex.A.15). No reason why first words of para. should not be true. Cannot say if injury was intended. Do not know what was behind articles. Knew words untrue. Warnings not threats. Result will be dismissal. "Threats" must be connected with rest of context. A threat alone may do no harm. Not wrong in itself. In Spanish "a sting in the tail". Do not threaten my workmen. Legally might be called a threat. But not in the article. I suspend nobody. CWO only one who can suspend. Workmen have no access to Charter. Warnings created by orders, not by the Regulations. I do the paper work. Everything is signed "for" the C.W.O. Man in the street could consider

Plaintiff's
Evidence
No. 19
Julius C. Sene
Cross-
examination
continued

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Plaintiff's
Evidence
No. 19
Julius C. Sene
Cross-
examination
continued

C.W.O. as Head of Administration. In legal parlance my letter contains "threats". Heard of delay in charge against Matos after letter had been issued. Informed C.W.O. of the circumstances and took his answers. Satisfied there was a prima facie case. Wording slightly varied.

Adjourned until 3 p.m.

CROSS-EXAMINATION continues:

Allegations in article false or distorted. Inaccuracies. Allegations about rain. Paid in carpenter's shop if raining. No reason to believe my system changed. I know it did not rain on a Friday during that period. Get daily returns of rainfall. No knowledge of Cooper incident. Pay day Friday. Consider Rosia to Quarry closer than Rosia to CEPO. CEPO on way home from work. Suggestion could be a reasonable one (Gibraltar Chronicle of 30th Sept. 1960 produced). Rainfall .ll. My record must be wrong. Am not inaccurate in other respects. W.C's. Two W.C's and one urinal in use. Not meant for 197 men. For those who stayed at work. Thirty or so. Arriving workers might require more accommodation. Others temporarily out of action. They were there but out of order. The two W.C's were in perfect condition. CEPO Welfare Officer was concerned with Factory Inspection arrangements. Not familiar with terms of Factories Ordinance. Statement about mason's tools not inaccurate. Misleading or distorted. Allegations re lockers false. Yard strewn with lockers. Three walls covered with lockers when Barrack rooms modernised. More than two years ago. Some lockers piled up in yard. C.W.O. can deal with a man for minor offences. Action on behalf of C.W.O. the Head of the Establishment. Difference between judicial and administrative process. Warning letters written on basis of Bainbridge report. In one case only. Hearing (Ex.A.23) "not in the book". Hearing in minor offences if one asked for. I would accept Bainbridge in preference to Matos. Matos's English is fair. He understands. No requests to cross-examine. They said very little. Nothing of substance. Netto and Luque appeared as friends. G.F.W.U. not in list of recognised unions. Not sufficient members. Higher authority

decision. Natural justice served without my hearing an offender. Do not know what my predecessor did. Have made alterations in procedure. Found some procedure and will leave it. Procedure completely fair. Not affected by criticism. Para in (Ex.A.15) not endeavour to be friendly or accept terms. Door not closed to apology. Your terms not acceptable. Not an offer to negotiate. Partial vindication. Considered offer a "trap". Unfair to me and W.D. Offender is one who should offer. Not up to me. We stated our terms. Could have negotiated after issue of writ.

Plaintiff's
Evidence
No. 19
Julius C. Sene
Cross-
examination
continued

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RE EXAMINED:

In letter (Ex.A.15) statements of fact in article not true. Definitely compared to Nero and Torquemada. Considered had been defamed. Allegation of harsh treatment made and untrue. Obviously personal attack on me. (Para 1 of Regulations read). Provides for local rules and W.D. instructions. Letter includes the charter. Letter (Ex.A.1) "Discharge" not "Dismissal" recommended. C.E.P.O. must be satisfied. Reg. 440. Gives 3 months to remedy short comings. Man not discharged without warning. Given further chance if effort made. Another three months. Civ. Employees Order. Matos "industrial". Verbal warning. Given by officer of the installation. G.W.O. decides if second transgression. I send the written warning after verbal or written report. Must be satisfied as to procedure and breach - then send warning letter. Right to ask for a hearing in any event. Workmen not suspended for revenue offences. Not regarded as a criminal offence. Matos case in police charge. Told he would be charged. Security Police not "encargados". Latter definitely means charginman, ganger or foreman. In context of the article. Statement of claim has perfect translation. G.W.O. decides minor offences. 12th July. Matos. Bainbridge had to decide if offence committed. No explanation offered by Moreno. No hearing asked for. Up to 30th Sept. 1" shown as annual rainfall. My record on Saturday would be from 10 a.m. Thursday to 10 a.m. Friday. Not 10 p.m. to 10 p.m. as in Chronicle. Having read "Vox" article I should not have published it about

Re-examination

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Plaintiff's anybody. If no malice facts would have been
Evidence investigated before I was named. Threat in the
No. 19 article had a sting. Warning letter not a
Julius C. Sene threatening letter. Particularly in Spanish
Re-Examination translation of "threat".
continued

No. 20

S. COOPER

Plaintiff's
Evidence
No. 20
Stanley Cooper
Examination

10 STANLEY COOPER: On oath: Sup. Engineer, E. & M.
In contact with Mr. Sene. Admin. officer of whole
Dept. Queries to him on administration. Head of
my section. 120 men under me. Minor offences are
dealt with by charge hand or clerk of works. Not
many offences. Brought to me by Clerk of Works if
serious. Then see worker. Always hear what he
says. No case here beyond my control. Dealt with
all myself. Usually admonish verbally. Next step
would be to ask Sene to send warning. Sene said
contrary to regulations. He was right and I was
wrong. Orders outside scope of work. Tradesmen.
About March 1960. Only time I took offence to
him. Deal with Sene re men's problems. Men more
than satisfied. Extremely helpful. Remember
"Vox" article. Discussed in my office.
20 Particularly relating to Cooper. (Namesake).
Translated to me. All wrong in my opinion. Sene
gave benefit of slightest doubt to employees.

CROSS-EXAMINED:-

Sene judged against me. His job to interpret
regulations. Said I was wrong. He interpreted
the regulations. Formed an opinion. No knowledge
of warning letters to Matos and Moreno. Sene acts
for C.W.O. Head of Est. takes disciplinary action.
I have given "telling-off". No mark against man
at all.

Cross-
Examination

30 RE-EXAMINED:-

My instructions not obeyed when I approached
Sene. Can give verbal warning. No cause yet to
do so. (Court) In Gibraltar two years in
September. Twenty-four years service elsewhere.

Re-Examination

Adjourned until 10.30 a.m.
15.11.1961.

No. 21
Submission
by Defendants'
Counsel
15th November
1961

No. 21

SUBMISSION BY DEFENDANTS' COUNSEL

Submission by J.J. Triay:

Juryman father of employee of plaintiff's solicitors. Natural bias. Small community. Conflict of loyalties. Only knew this morning. Asks that juror stands down.

Isola: Not sufficient cause for challenge. Precedent. Juror not connected with party. Employee with solicitors for about two years. Pou is juror concerned.

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Court: Some possibility of bias and prefer to accede to submission - provided parties agree to continue with eight jurors.

Jury (less Mr. Pou) return.

PLAINTIFF'S EVIDENCE (Continued)

No. 22

E. MOR

Plaintiff's
Evidence
No. 22
E. Mor
Examination

Ernest Mor on oath: General Secretary of Gibraltar Confederation of Labour. Largest union.

10 Membership of 2000. Know plaintiff in official capacity for 8 or 9 years. Seen him on occasions on behalf of workers. He is helpful. No complaints from any member of union. Acquainted with system of warning letters. Not threats. Workmen have opportunity to be heard. Provided in Regs. that men may be advised by representatives of union or friend. Have made representations to W.D. Procedure is quite fair. Safe-guards.. Not harsh. No injustice. Agree with warning letters. Convenient. If warning given man may mend his ways. Read article in Vox. Considered attacks not justified. Something of my Union in the article. Wrote to "Vox" about it.

20 "Encargados" usually understood by workmen as chargemen, leading hand or foreman. "El tio" means someone "high up". Joint Secretary of Industrial Council. Five official employers represent employers. No complaint there of W.D. procedure.

CROSS-EXAMINED:

30 Other people may have an honest but mistaken different opinion about W.D. Entitled to criticise. May use strong language subject to law of libel. Sene very helpful. Interpretation of regns. Details of any charge. Not for a decision. Not on warning letters. We prefer matters recorded. Verbal warning arbitrary and we usually protest. Man has right to hearing after written warning. Hearing usually after warning letter. Warning letter not a black mark against the men. Not the same in all cases. Man can challenge warning and be heard. Can appeal against warning. Result of report by immediate supervising officer. Conviction not recorded before the workmen heard. Not a decision for Sene. Acting for C.W.O. Sene may not have heard the workmen before letter sent. Acts on report

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Cross-
Examination

Plaintiff's
Evidence
No. 22
E. Mor
Cross-
Examination
continued

sent to him. Does not necessarily hear the other side. Some of G.F.W.U. were previously active members of my union. Following a general meeting. Union is affiliated to A.A.C.R. Not contrary to interests of Union. Union quite free. Some wanted to break affiliation. Some of our rules amended. Tried to model on pattern of English unions. Rules amended long ago. 1950 or 1951. More part of established order than the G.F.W.U.

RE-EXAMINED:-

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Re-
Examination

Seen no return of G.F.W.U. membership. Appears in Director of Labour's annual report. Not recognised by employers. Not represented on Industrial Council. No application refused by employers. Garrison Engineer would normally give warning to workmen. Shop steward would be there. Workshop level. Workmen seen by G.W.O. in first case. Can state case with shop steward. Passed to Sene if offence is to stand. Workmen may have a hearing - rather than an appeal. I could go further if dissatisfied. To Civil Secretary or Brigadier. I take these steps as Union Secretary.

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Case for Plaintiff.

SUBMISSION BY DEFENDANTS' COUNSEL

No. 23
 Submission by
 Defendants'
 Counsel
 15th November
 1961

Triay wishes to make submission.

Jury retire. Submissions made in their absence. Issues must be removed from jury at this stage.

10 Defence of fair comment. Submissions as to law. Defendants should not be put to election. Young -v- Rank (1950) 2 K.B., Parry -v- Alum. Co. Ltd. (1940) W.N. 45. "No evidence of malice". Discretion as to election. Defendants have right to ruling.

Isola: Defendants should be put to election W. Book p.832. Has given evidence of malice. Ruling should be deferred until after defendants' case. Malice not essential. Marbe -v- George Edwards (1928) 1 K.B. 269. If wishes to be heard now should be put to election. Submissions should be deferred.

20 Court: Do not consider this is a case where defendants should be put to election and the submissions may continue.

Triay continues: Fair comment. Similarity to qualified privilege. Justification. Fair comment where justification has failed. Allegations of fact and comment. Peter Walker & Sons Ltd. v Hodgson (1909) 1 K.B. 239. Sutherland -v- Stopes (1925) A.C. 47. Facts truly stated. Comments need not be true. 30 Silkin-v- Beaverbrook Newspapers Ltd. (1958) 1 W.L.R. 743. Liberality in expressing opinions. Matter of public interest. Facts truly stated. Court must direct jury. Fairness of comment. Turner -v- Metro Goldwin Meyer Pictures Ltd. 1, A.E.R. p.461. Fairness of comment. Judge must rule. McGuire -v- Morning News Co. (1903) 2 K.B. p.110. Judge must say if capable of being fair comment. Evidence on which verdict could be found. Jury need not agree or even 40 sympathise. Clark -v- Molyneux 3 Q B D p. 247. Issue of malice. Thomas -v- Bradbury Agnew (1906) 2 K.B. 627. Gatley 322-3. Actual malice. Burden on plaintiff. Malice in pleadings. Burden of proof in fair comment

No.23
 Submission by
 Defendants'
 Counsel
 15th November
 1961
 continued

relates not to malice in law. Not every word must be justified. Facts proved already. Threat does not involve impropriety. Difference between threat and warning. Sting of libel in failure to investigate. Hodges -v- Webb (1920) 2 Ch. p. 91. Effect of interrogatories. Person not heard by plaintiff before warning. Has writer the right to make the criticism. Christy-v-Kingston (1914) A.C. Natural justice. Must be a reasonable comment. A Simile. Illustrative. Tells nothing about Sene. "Era" a state of affairs.

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Adjourned until 3 p.m.

Malice p. 323 of Gatley. No evidence of malice. Plaintiff to prove that such malice exists. Particulars of malice. As pleaded. Gatley. Bound to ascertain facts. (a) & (e) are same allegations of malice. Adam -v- Ward (1917) A.C. 309. "Language unnecessarily strong". No doubt that matter is one of comment. Liberality. Mor's evidence. Facts on which comments based are proved and admitted. No personal attack on Mr. Sene. Personal characteristics of Nero and Torquemada. Comparison with "era". Sting of the libel. Sutherland -v- Stopes (1925) A.C. 78 natural justice. Dealings at Sene level. Answer to Interrogatory. Comment obviously of a system. Public officers may be criticised. Jury will find facts are true.

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Submits no case for jury.

Isola: Facts still in dispute. Gatley. Fair comment. Burden of proof p.354. Functions of judge and jury. Has there been a defamatory statement? Are words true? Warning not a threat. Santen -v- Busnach 29 TLR p. 214. Sene not shaken. Fair comment.

Court: Most of to-day's submissions relate to matters which should be considered at later stage of trial and not in support of application that there is no case to go to jury. Counsel's address more suitable to a non-jury action. In my opinion case must go to jury, if only for the fact that, if the defence of fair comment is to succeed, the defendants must prove statements of facts to be true. If not the

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defence must fail. Question of fact for the jury and not to be determined by the Judge. If not true in fact no question of malice arises, for defence of fair comment fails.

Adjourned until 10.30 a.m.

No. 23
Submission by
Defendants'
Counsel
15th November
1961
continued

No. 24
 Court Notes
 Addresses by
 Counsel
 Plaintiff's
 Counsel
 16th November
 1961

No. 24

COURT NOTES

Addresses by Counsel

Counsel in chambers to settle issues for jury.

Case resumed in Court. Jury present.

Triay: Defence will call no evidence.

Isola: No answer by defence. No explanation. "Fear or favour". Plaintiff not afraid. Jury must remember defendant's failure when considering verdict. Not an honourable course. Law of libel for journalists. Printed word. Good or harm. Abuse of powers of press. Press have a weapon. Copy of issues for jury's determination. "Era" etc. comment. Confirmed by deft's pleading. Fair comment. No fair comment if malice. End of defence. Damages. No apology. Must be unqualified. Persisted in libel. Attack based on three cases. Words clearly libellous. No plea of "innuendo" on any sort of report. Amendment to cover any official. "Encargados". Natural meaning of word. "Apology" in Triay's letter. No retraction. Persistence in libel. Plaintiff has called evidence of translation. Each and every allegation must be proved true. Sutherland -v- Stopes. Are facts true? If not end of case. No chance to balance evidence. Evidence of procedure. G.W.O. hears complaint. Sene satisfies him. Warning letter not a threat may be said to be a threat. Regard to circumstances. Santen -v- Busnach 29 TLR. Warning may have a beneficial effect. Innocent warning or threat. Three cases of warning only. Only one suspension. Found with W.D. property. Not on report of a "encargado". Clear Sene makes enquiries. Cooper's evidence. G.W.O. Judge Sene "confirming authority". Dealing with administrative procedure here. Reason for Matos hearing after Vox publication. Investigation. Not necessary to see the man. Prima facie case. Accused need not accept without hearing. Grave aspersion on character and position. No vestige of truth in article. Contents of remainder of article. Public vengeance.

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Comment in public interest. Is it justified?
Era of Torquemada and Nero. Excessive cruelty
and indifference to suffering. Gatley. Language
so extreme. Violent and extreme. Criticism not
a cloak for invective. Exceeds bounds of fair
comment. Plaintiff wants character cleared.

Adjourned until 3 p.m.

No. 24
Court Notes
Addresses by
Counsel
Plaintiff's
Counsel
16th November
1961
continued

10 Malice. Defeats whole defence. Case in reply.
No evidence of an enquiry. No prudence.
Ruthless indifference. No following article as
promised. No "touristic journey". After complaint
editor stops at Viney Quarry. Then realised need
for care. Nero and Torquemada. Violence of the
language. To injure the plaintiff. Editor should
be put on his guard. Enquiry would have proved
falsity. Persistence. Knew it not true. Make
plaintiff come to Court. Damages. p.625. Must
atone for libel. Plaintiff forced to Court by
conduct of defendants. Every word defames the
the plaintiff.

20 Triay: Other side of the question. Untrue or
grossly distorted. Allegation of defendant.
"Encargados". Prescott gives dictionary meanings.
Word not appearing. Never dictionary. "Person
in charge". Several ranks and grades. Natural
and ordinary meaning of word in the Spanish
language. Why not follow Castilian meaning? No
plea of innuendo. Mor's evidence. Referred to
workmen's understanding. Letter of Triay & Triay.
Letter of complaint. Natural justice. First
30 reaction. "Threaten". Distinction between thraat
and warning. Entitled to make a threat. Hodges
-v- Webb (1920) 2 Ch. 87. Refers to case cited
for plaintiff. "Threat" not libellous. Debtors
threatened every day. Sorrell -v- Smith.
"Threaten" not libellous. Suspend. Part of
Sene's duty. Letters in correspondence. Real
sting in lack of natural justice. "Right to
criticise". Interrogatories. Admission that
"considers report". Accused not given a hearing
before warning letter sent. Sutherland -v-
40 Stopes. Errors in detail not material to truth.
Gatley p.158. Lyon -v- D. Telegraph (1943) 1 K.B.
Cannot pick on one word for gist of the libel.
Judges concerned with principle of natural
justice. Point raised by plaintiff. Insisted

No. 24
Court Notes.
Addresses
by Counsel
Defendants'
Counsel
16th November
1961
continued

that not a judge. In fact judges whether to act or not. Has to make a decision. Mor considered verbal warning unfair. Complaint that warning letter is based on accuser's report. Letter mark against character. Accused not heard by judge. Appeal after letter sent. Mor a biased witness. Conduct of public officer a matter of public interest. Three minor offences to make a serious offence. Three quarters of ingredients. Bainbridge case. No reference to Matos. Concerned with principles. Bainbridge makes report when annoyed. Hearsay by Sene. Matos not heard on 7th Oct. Heard on next working day. Bainbridge not ever there. Hasty arrangements. Not untrue if in accordance with Civilian Regulations. Man in Street may criticise them. Justifies everything by C.S. Regns. para 72. Disciplinary questions. Mysterious Charter. Civil local regulations. S.71. Suspension. Defending man's right to be heard, Sene in XX.

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17th November
1961

Facts in article true. Errors of detail do not go to sting of the libel. Sting is acting only on a report. Warning letter sent without investigation. Regns. and orders require reply from accused person. Power to suspend. In public interest. Pending prosecution. On serious charge. Strong prima facie evidence. True interpretation not followed. Ruler case. No investigation by Sene. Automatic suspension. No right to suspend without investigation. Para 440. Inefficiency. Difference between discharge and dismissal. Para referred to. No dishonour in discharge. Specific power to depute. Not below the rank of Major. Warning of dismissal without hearing. (Letter Ex. A.l.). "Is reported". Fact complained of by writer of the article. Inefficiency not misconduct. Insolence is. Indiscriminate use of words. Letter sent to Moreno so that Matos could not say he was victimized. Vasias complaint of assault. Friend sent away. Door open to workers. Letter sent without investigation and on strength of a report. Clearly admitted. Public may criticise any law. Article discusses anomalies. Not discussing Mr. Sene personally. In course of his duties. Article privileged in public interest.

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Era of Neros and Torquemadas. Comment

on state of affairs. Fair comment. "As if" shows comment. Prototype of an era. Question is "is it fair"? Comparison with victims not Sene. Character of Torquemada and Nero. No imputation that Sene unfit to hold office. Protection of Judge or Counsel. Strong language from Bench. "Days of Gestapo" etc. No abuse of House of Lords by Lord Simon. Criticism not to be a cloak for unfairness. Comment a figure of speech. Distinguished by use of metaphors. Simile. Liberal view to be taken. Silkin case "Sugar for Silkin". Words of libel. Vox has acted without fear or favour on conduct of a public department.

No. 24
Court Notes.
Addresses by
Counsel
Defendants'
Counsel
17th November
1961
continued

Malice. Plaintiff's reply. Intention to injure Sene. What evidence of spite here? Malice particularised. No recklessness. Letter of Triay & Triay shows attitude of defendants. Still maintain facts true and no reflection on Sene. Nothing from which malice can be inferred. Not personally compared to Nero and Torquemada. Parties do not know one another. Clark -v- Molyneaux (1877) 3 Q.B.D.237. Onus on plaintiff. Irrelevant whether defendants knew of procedure or not.

Evidence from which plaintiff infers malice. None. Why put deft in box where no malice exists? Case already long enough. No need to call a string of witnesses. Turner -v- M.G.M. Demeanour a dangerous line of argument. Anonymous communication. Use of other words in article other than those complained of. Sweeping statement re rainfall. Why infer malice from other parts of the article? Lyon -v- D. Telegraph (1943) K.B. 746.

Defendants do not have to clear their names. Sene a loyal servant of W.D. Exaggerated sense of loyalty. Obsessed. Attack against W.D. not on character of plaintiff. Sene has nothing to clear. Verdict for defendants would leave Sene without stain on character. Will uphold freedom of speech. G.M.C. and infamous conduct. Mental Board Action. Decision of finding of Divorce Court. Not on finding of an accuser. Principles of natural justice. Cannot rely on judgment of other tribunal but must hear accused. Convenience and justice often not on speaking terms. Must

No. 24
 Court Notes.
 Addresses by
 Counsel
 Defendants'
 Counsel
 17th November
 1961
 continued

give parties opportunity of being heard. This justifies defence of fair comment. Natural justice.

Isola wishes to raise a point of law.

Triay objects to presence of jury. Jury retire.

Isola Sorrel -v- Smith (1925) A.C. 700.
 Hodges -v- Webb. Asks Court to peruse.
 Hodges -v- Webb. Santen -v- Busnach not considered. No application to threats, p.96.
 H. & W. did not decide a warning a threat. Not commented on or disapproved. A simple warning is not a threat and cannot be one.
 Sorrel -v- Smith does not upset C/A decision. No legal authority for proposition.

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J.E. Triay: Hodges -v- Webb. Question of legality or illegality. Illegal threat or illegal warning. Threat not necessarily an illegal act. Not necessarily an illegality. Sting does not lie in "threat". Sorrel -v- Smith. On element of illegality Purpose of threat. Legal or illegal connotation. No illegal connotation Matter of law. Santen -v- Busnach. Attempt to associate legal with warning.

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No. 25

CHIEF JUSTICE'S SUMMING-UP

No. 25
 Chief Justice's
 Summing-up
 18th November
 1961

10 Gentlemen of the Jury, it is my turn to say something in this case and it will soon be time for you to reach your decision. In this case you have heard the evidence, you have heard it argued by experienced Counsel and you have listened to them with patience. I am afraid I may take up rather a lot of your time as I see from the

20 notes I made for this summing up it may turn out to be rather a lengthy business. I shall try to explain to you gentlemen what is the meaning of libel in law and I shall talk to you about the evidence and it will be for you to determine as a matter of fact whether the article complained of comes within the definition of libel in law. If you decide against the Defendants the question of damages will be entirely within your province.

20 First of all there are one or two things I have to say to you of a general nature and the most important one is that you must decide this case on the evidence alone, on the evidence of the witnesses you have heard in the witness box and on the interrogatories and the pleadings, and when you reach a decision on these facts your decision must be on these facts alone.

30 Nothing you have heard outside, gentlemen, can influence your decision. You will appreciate that it is rather dangerous in a small place where so many people know so many others. Any comment you have heard about it, put it right out of your mind and decide it on the evidence which is before you. This is not a very easy case for you. The libel and Slander Law is a little bit complicated and involves a certain number of legal complications. I shall do my best to make these clear to you, meanwhile the facts as I have said before are entirely for you, for your good judgment and for your common sense. There is a slight difference

40 here because in most Civil cases you have evidence on both sides, evidence which can be weighed one against the other and then you decide which evidence outweighs the other and you give a decision in favour of the party whose evidence is the greater, which evidence has the greater

No. 25
 Chief
 Justice's
 Summing-up
 18th November
 1961
 continued

weight. In this case of course only the Plaintiff has called evidence. The Defendants haven't seen fit to call evidence. They are entitled not to call evidence if they don't want to and they rely on their interpretation of the law applicable to this case and on such points of evidence as are already in the evidence of the Plaintiff and his witnesses which in their opinion were in their favour. They will say that the evidence outweighs the evidence which the Plaintiff has produced in this case, outweighs his allegations that he has been defamed. Your duty is to decide whether the Plaintiff has been libelled by the statements contained in the article which, of course, the Defendants "Vox" published. There is no dispute about publication and they couldn't very well deny it appeared in the paper. You probably know more about "Vox" than I do. It is pleaded that this paper has a wide circulation in Gibraltar and it is also read by English and Spanish speaking readers. You know who the parties are, you have seen the Plaintiff and heard what he says. He is a Departmental Civilian Officer who is in charge of the administration of the War Department Administration Organisation in Gibraltar and, in fact, as you can see it is really quite a responsible job.

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The Defendants are three, the Editor, the Publishers and the Printers of this newspaper. They are all in law responsible for any libel which appears in their newspaper. Nobody has disputed that. If there is a libel all these three people are going to be jointly and severally responsible. You have the pleadings, you have copies of those pleadings, and I am sure you will study them carefully later when you go into the Jury room to do so. They contain as their main features the statement of claim, then the defence and then again the Plaintiff's reply to that defence. It gives you a picture of the whole dispute. The Plaintiff sets out in his statement of claim what he contends constitutes the libel. The words said to constitute a libel are in Spanish and we know that many readers of "Vox" speak Spanish, and indeed in many cases Spanish might be called the first language of some of the readers. The Plaintiff said in his

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claim that the words complained of are false and malicious. He says because of that he is injured in his reputation and in the way of his employment, because of it he has suffered damage, and he asks you to award him damages you consider suitable reparation for the wrong done to him.

No. 25
Chief Justice's
Summing-up
18th November
1961
continued

10 I have several decisions to make in this case before the matters can come to you for your decision on the facts and the first one is **are** these words - I don't think I need read them to you, they are in the pleadings and you are perfectly familiar with them by now no doubt - are these capable of being defamatory? Could they in certain circumstances be words which lower the Plaintiff in the estimation of right-thinking men? After I decide they are capable of such a meaning, you step in and you decide whether in fact these words were defamatory **or if they are not.**

20 If they are not capable of being defamatory that is the end of the matter for the Plaintiff. If they are not capable of being defamatory, that is to say if I say that they are not capable of being defamatory, that of course would be the end of this action as you wouldn't be called upon to make any decision at all. You heard the arguments about the translation and, of course, you can appreciate much better than I can the meaning of these words in Spanish in which they were published; don't let us forget that. The libel, if there is one, is

30 contained in the words in the Spanish language not in the translation. For me, in order to decide whether they are capable of a defamatory meaning, I have to rely to some extent on the translation as to the meaning of the words which are disputed and having considered this carefully and on the evidence, I rule that the words are capable of referring to the Plaintiff and they are capable of bearing a defamatory meaning in the

40 mind of any reasonable person. Later on it will be for you to decide whether they are defamatory or not. You have heard the Plaintiff for some time, there is no doubt at all that in his mind, of course, these words are defamatory. You will remember his evidence. I will recall some of it to you very much later on, but he says the article referred to him. He says it was a personal attack, he says it is untrue and

No. 25
 Chief Justice's
 Summing up
 18th November
 1961
 continued

libellous. In his evidence he said he was astounded when he read these words, and he says too they are inaccurate and false, and we go a bit further when Counsel rises to his feet he says the words are violent and extreme exceeding the bounds of fair comment, words which simply must injure the Plaintiff in his reputation.

Of course, against that, what does the Defendants say? There are two sides to every case. They say, and stick with this all through the case, they say the words are true in substance and in fact and as far as the comment is concerned, and I shall come to this distinction between fact and comment later, as far as the comment is concerned it was published in good faith, published and printed in good faith, and furthermore they say that the matter of the article is one of public interest. Here again I come in because I have to decide whether it is in fact, whether the article complained of is in fact in relation to a matter of public interest, and a matter of public interest here, of course, is the manner in which the civilian employed workmen of the Works Department are dealt with. I have no doubt, no hesitation at all in ruling these words are words which could be in the public interest. The employees of any War Department or any Service department is a matter on which a newspaper is entitled to comment or criticise, provided that comment and criticism is quite fair. You know what the defence is, you will find that written in the Statement of Defence in the pleadings. They say, of course, that the Plaintiff signed the letters addressed to workmen; no-one disputes that. They say that in them he threatens dismissal or suspension, no hearing was given, letters are just written on the strength of a report, and in their defence they quoted specific cases of the letters to which they referred; these were called threatening letters. You have got these letters in the bundle of correspondence, I think there are four of them, one of suspension I think and three of warning. They state in the course of the pleadings there were other letters on which they were going to rely, but these letters have for some reason or other not

materialised. They also say, and this is a matter which I think will complicate it, that the words are not written about the character of the Plaintiff, they are written on the methods employed by him in the course of his duties. All that is written out in the pleadings. To summarise in fact as far as the defence is concerned, is that the words are true in substance and fact and fair comment, no malice about it at all, written in perfectly good faith.

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On these questions of good faith, fair comment, malice etc. I shall have certain remarks to say later, but before I come to the defence of fair comment, I must read you something which in fact I should have read to you earlier and that is what defamation is. It is very important to start with that you should know exactly how defamation is defined in law. This is what it is in the words contained in one of the authorities and the definition is this:-

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"..... a man is entitled to his good name and the esteem in which he is held by others and has a right to claim that his reputation shall not be disparaged by defamatory statements made about him to other persons without lawful justification or excuse. If the words tend to lower a man in the estimation of right thinking men, tend to lower his esteem amongst his friends, then the words which cause that are generally held to constitute libel."

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Now gentlemen, to return to the defence, and we come now to what is very important indeed, because this is going to relate to the issues you will have to dispose of later on, and that is the defence of fair comment. It was said these were words of fair comment on a matter of public interest. You have got to divide this in two. Firstly, they are two distinct issues, whether these statements of fact are true, they must be true, and whether, as distinct from the statements of fact, whether those are fair. You have to separate this so to speak into fact and on the other hand comment. We have to decide what part of the words complained of are fact and what parts are comment. That is the first issue for

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consideration there. This is number one. In fact I am entitled really to make this decision, it is only necessary to refer the decision to you in doubtful cases where there is any doubt and it seems, generally speaking, to be agreed, I think it is agreed on the pleadings and I am not sure whether Mr. Isola has disputed it or not, but I think it is now agreed that the words up to "without bothering to make enquiries", the words up to there are statements of fact and the rest of it "as if we lived in the era of the Torquemadas and the Neroes" that is comment. If you will look at it, with your knowledge of Spanish you will see that the same words in Spanish mean "without bothering to make enquiries". Until you come there these are statements of fact, after that when you come to the words "as if we lived in the era of the Torquemadas and the Neroes", those are matters of comment, and we have got to very carefully separate them. You will notice from the issue which is going to be before you, are the words complained of statements of fact or expressions of opinion, or partly one and partly the other. Well gentlemen, I don't think there is any doubt, and will in fact exercise my power in this matter, and I will tell you that in fact the statements are fact prior to the word "enquiries" and subsequently the words are expressions of opinion and I think if you will find on that issue, that the words complained of are partly fact and partly of comment. I don't think there is any serious dispute about this in this case and I think it is fairly obvious you have got to make this distinction.

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Then we come to the important distinction. If the Defendants are going to succeed in this defence of fair comment, the facts must be true. If the facts are not true they are going to fail in this action. You must be satisfied these facts are true, that is to say all the material statements in it. Of course, it is only a very short statement, but generally speaking in the law of Libel the facts are said to be true when the material statements are true. The main charge I think has been explained by Mr. Triay; the whole gist must be true. What they refer to as the sting of the libel must be there and it

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must be true. The Defendant has got to prove this to your satisfaction that these facts upon which he relies, these facts are true facts. If they are not true the defence fails right away and the case is at an end. In other words, if the words are true the Plaintiff cannot complain of libel. He hasn't any right to a character which is free from those true facts. That is on the issue of the proof of the facts.

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10 Now we come to the other side of it, the expression of comment, the expression of opinion. Those must be fair. This defence is called fair comment, and they must be views that any fair minded person would hold on a matter of public interest. It must be an honest expression of somebody's views. That is speaking very generally at the moment. Later on I shall have to draw your attention to some authorities which make that point a bit clearer, but the person who wrote it

20 must be expressing an honest and not a malicious opinion. Here again I come into this and I have to make another decision, and that is is there any evidence before you that this comment is unfair. If there is no evidence you won't be concerned with the matter any longer. I have considered again, and I think from that evidence you will certainly have to consider, whether this comment is unfair or not, and so I do decide that there is some evidence that the comment is unfair, and

30 it will now be for you to decide whether that comment is fair or it is not. Does it fall outside the limits of what we might call fair comment? Is this comment fair or not? The decision is going to be entirely for you. If you think it is an honest expression of opinion warranted by facts which are truly stated. Now I have dealt with what we might term as issues 2 and 3. Insofar as you find they are statements of fact are such statements of fact true? I told you,

40 I made it clear about the necessity to prove the truth of the facts. Then we come to the question insofar as you find that they are expressions of opinion, do such expressions of opinion exceed the limits of fair comment. That issue relates to limits, as you will see, "do they exceed the limits of fair comment". Opinion is free in this world as we know. We have got the freedom of the press, we have got the freedom of any individual to comment

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and criticise, provided that it is fair and reasonable criticism. A man is perfectly entitled to comment in good faith on any matter which is of public interest. Here I am going to use words which are rather better than mine and I am going to read you an extract on the point from a case which has been cited by both sides I think and that is Sutherland and Stopes. It has been read to you before and it is about this question of fair comment, how far you can go when you are commenting for it to be fair, and here we have the words of Lord Esher. I know it is boring to have to listen to reading, but I do want you to listen to it because it is very important indeed on the issue of fair comment. "What is it that fair comment means? It means this - and I prefer to put it in words which are not my own; I refer to the famous judgment of Lord Esher M.R. in *Merivale v. Carson*: 'Every latitude', said Lord Esher, 'must be given to opinion and to prejudice, and then an ordinary set of men with ordinary judgment must say (not whether they agree with it, but) whether any fair man would have made such a comment.....' A little later on we find another comment on the case of *R. v. Russell* and that is "Could a fair-minded man, holding a strong view, holding perhaps an obstinate view, holding perhaps a prejudiced view - could a fair-minded man have been capable of writing this?" which you observe is a totally different question from the question do you agree with what he said? Not a question of whether you agree with what is said, but do you consider a fair-minded man would write these words of which are complained.

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Now gentlemen after the preliminary observations we now go to the next stage. You may agree this is fair comment but, of course, we haven't come to the end of it there, because the Plaintiff may satisfy you, and it would be of course for the Plaintiff to satisfy you, that although a defence of fair comment succeeds, the words were written with malice by the persons who published the article. It was fair comment, but behind all this there was malice. It was pointed out to you by Mr. Triay yesterday, and I entirely agree with him, that in this sense malice doesn't mean the rather complicated malice in law

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but it simply means the popular meaning, what we all know of malice, spite. Where you have got spite, ill-will against somebody, that is malice. Bearing in mind this definition of malice and the fact I said it is for the Plaintiff to show an article which was fair comment was inspired by malice, in the course of these pleadings the Plaintiff has delivered particulars of what he alleges to be the malice behind this article.

10 You will find this in the pleadings gentlemen, and as far as I can see the Plaintiff says that the malice comes from reckless indifference, it was reckless indifference as to whether these words were true or false, the malice may be inferred from the violence of the language used and the persistence of the Defendants that the words they used are perfectly true and fair comment, and they also say they failed to check the information, the editor, Publishers and

20 Printers, before they published it. It is very difficult for the Plaintiff to call any evidence on that point because the Defendants have not come into the box to give him any sort of opportunity of finding out whether that is so or not. Here again on this point of malice I am going to read you another extract on pages 354 and 5. We get to the point here in this book where it has been decided by the Jury that the words are fair comment and it is then for the

30 Plaintiff to prove that the words exceed the limits of fair comment, they were not the expression of the writer's real views but they were inspired by malice. (Quotes from Gatley page 354 & 355) "Any facts which go to show that the defendant published the comment in the knowledge or belief that it was unjust, or without any belief that it was just, or in reckless indifference as to whether it was just or not, will be evidence of dishonesty or malice." Malice

40 may also "be inferred from the terms of the article itself." Those are very important words to consider and on this point it is raised as one of the examples of malice inspired by the Plaintiff. I will read another extract about reckless indifference, and you will have to consider whether this was published, even if it was fair comment, whether it was published with recklessness. Recklessness, according to our learned author, is "a state of mind" (Quotes from Gatley). That is

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the authority for the meaning of reckless indifference which is pleaded by the Plaintiff as an example of the malice shown in the publication of this article. Recklessness that amounts to no more than carelessness would not be considered an example of malice. A man can act hastily, he can act stupidly, but he won't necessarily act with malice. The question is, and here again I quote, the question is did the Defendants in fact believe what they said.

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Now there is another way in which malice can be shown and that is, of course, it can be inferred from the general conduct of the Defendants in the case. If the Defendants have made mistaken statements and if they decline to apologise or retract when they know it to be false or unfair, then you may infer that because of their refusal to retract the statement they know wasn't true, they are actuated by malice. Of course, in this case I don't know how far that will arise as the Defendants right up to now state that what they published is true and is fair comment, but if you think they know quite well it is false and if they still go on insisting, you may infer that was something malicious. It is a little complicated, but I hope I have given you the general lines; was the Defendant actuated by malice? We shall want you to give a label against each one. That sic. will be for later on.

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We are now going to come to this rather involved subject on which there was a good deal of discussion, and that is about the meaning of the words. There you have a very great advantage, I can only act on what I have heard from learned Counsel and the evidence in the box. Firstly Mr. Triay asked me to direct you in law and it has also been asked by Mr. Isola, as to the meaning you should give to this word which has been argued about, "amenaza". Mr. Triay has an authority to show that the word threat does not necessarily mean an illegal act, not necessarily conveys a libellous meaning, and I think you will agree with me it is quite undeniable the word threat is often employed to utterances which are perfectly lawful. A threat doesn't necessarily mean something illegal and there is authority for that proposition, and to my mind

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everything depends on the circumstances in which the word threat is used. In one context it might mean illegal, in another context it is a perfectly reasonable and innocuous expression. It is for you to decide on the context of this libel and the circumstances of the libel, of the meaning the ordinary man in the street would give to the word. Of course, it is a point which is worth noting that most of the arguments on the points of this question of threat have been used in connection with its connection with warning letters, but what do the readers of that article know about warning letters. Might they not think it referred to a threat? Threatening words or not? It doesn't mention about anything written. What does he know personally, the man in the street, when he reads that. What does he know of the procedure. You may think the man reading it would think this is accusing Mr. Sene of a threat, not necessarily by word.

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While we are talking about words, let's consider this question of the Neroes and the Torquemadas. Now the pleading suggests that the Plaintiff claims these words mean he can be compared to these persons, that he acted in a tyrannous manner. No doubt, of course, both Torquemada and Nero had good as well as bad characteristics, but can you resist the comparison, if a comparison is intended, was intended to have an uncomplimentary meaning. You wouldn't call anybody a Nero or a Torquemada if you intended to pay them a compliment. Of course, on the other hand, I think it is fairly clear from the context that this comment was probably no more than a figure of speech. It refers to the era of Nero and Torquemada, but you have heard Counsel at great length and really I think you have got to decide, is it fair comment to compare things which are alleged to be done by the Plaintiff, whether in the course of his duties or not, is it fair to compare these things with things that happened in the era of the Neroes and Torquemada. Is it fair comment? That is for you to decide. Exaggerated comment is all right, everyone can make exaggeration, quite strong exaggeration, without it becoming libellous, but it is for you to decide whether this comment is fair. You have got these two points, the truth of the facts and the point about the fairness of the comment.

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Getting on with this question of the comment of the words, the point here to my mind is what do they mean in their plain and ordinary meaning. The article, as I have said, is written in Spanish. There are just two sentences in that libel. The Plaintiff says they are libellous in the ordinary meaning. Anyone reading this in the ordinary way would find these words libellous. The test here, gentlemen, is what meaning would be given to these words by the plain and ordinary man, the ordinary decent sort of fellow who was referred to in the English Courts as "the man on the Clapham 'bus'"; I would say by the ordinary chap who takes his family for a picnic in the Cork Woods on a Sunday afternoon. Just what meaning that sort of man would give to these words, the ordinary reader of "Vox". Here again I will reinforce this and will read you a little bit more on this point. The natural meaning to be given to words (quotes from Gatley). The test, according to the authority, is whether under the circumstances in which the writing was published reasonable men for whom the publication was meant would be likely to understand it in a libellous sense. Would a reasonable man, in other words, reading the publication complained of, discover in it matter defamatory to the Plaintiff?

That was the fourth issue and then I have a good deal more to say about the facts, but I am going to deal with the last question and that is the issue which may arise, it may not arise, and that is this question of damages. As I have said to you before gentlemen, it is up to you. If you find the case for the Plaintiff, you will have to consider the damages, the amount of damages you are going to award. It is entirely up to you and I am not going to offer you any suggestions at all, and the damages will be just one sum, they will be against all the Defendants. Each Defendant is affected by the act of the others and they will all have to pay. When you determine damages, there are certain things you are entitled to take into consideration. Firstly, you will have to consider what injury the Plaintiff has suffered from the libel of the Defendants. Obviously there is no special sum you will have to award, but you will have to make up a figure in your own minds for the injury he suffered to his

reputation. Secondly, you will have to consider the conduct of the Defendants in this case. Not only in publishing the libel, but their conduct right the way through all the correspondence you have read and right up to this Court. You will also have to consider the nature of the libel, consider the way in which it was published, the absence up to now of any retraction or any apology to him for the defamation. Those gentlemen are matters you will have to consider. If you like, later on I will remind you of them again. I have tried to dispose as far as possible of the matters of law in this case.

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I now want to have a look at the facts as they are shown in the evidence, correspondence and so on. One thing, of course, which immediately springs to mind where the facts are concerned, is that the Defendants have called no evidence, the verbal evidence is solely from the Plaintiff. You have heard the explanation of the failure or the absence of the Defendants from the witness box, you have heard the explanation offered, and it is entirely a matter for you to draw your own conclusions about that. Later on I am going to take you through some of the evidence just to refresh your minds in case you have forgotten anything since Monday morning.

Before that, of course, there is one very important point you have got to consider. This question, of course, is the vital issue of the defence, and that is this question of the natural justice which is said to have been denied the War Department employees. The Defendants say where the Plaintiff is concerned the real sting of the libel is not so much the actual words there but the fact that he is said to have acted without regard to the natural principles of justice. These words, of course, don't appear in the words complained of, but they do appear for the first time in a letter which was written by the Plaintiff's Solicitors to the Defendants, so that the whole suggestion that he was acting without the natural principles of justice seems to have come from the Plaintiff in the first instance. This has been seized upon by the Defendants in their argument. Much of the argument for the Defendants you have heard in the cross-examination

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of the Plaintiff was directed to show you that the criticism of the treatment of civilian employees in the War Department is fair comment because in the treatment of Civilian Employees it is a matter of what we call natural justice and one of the provisions of natural justice is that every man is entitled to be heard in their defence. They say, of course, that in the offending passages of this article they don't refer to the personal character of the Plaintiff at all, they think he is a very fine chap too, but they are attacking, so to speak through him, the methods he employs in dealing with the workmen as the Civilian Officer in the course of his employment. First of all it is an issue of course which you will have to consider in connection with the issue of the proof of the facts. So there, from the evidence are you convinced, satisfied, with the principles of natural justice in the treatment of civilian employees? You have heard instances where it was alleged that workmen haven't been heard, treated without natural justice, and you have heard details of those cases drawn out in cross-examination at considerable length. As a matter of fact, the cases brought to your notice are very few in number, just three of them I think. Of course, the Plaintiff, Mr. Sene, he naturally doesn't agree that the employees are not treated in a fair manner where disciplinary matters are concerned, nor does Mr. Mor, and of course one of Mr. Mor's duties is to look after the rights and so on of workmen. You have heard a lot of argument about this and I hope you will give this point your careful attention. Do you think natural justice to be lacking in the way Mr. Sene dealt with the people who were to a certain extent under his charge? Did he threaten and not investigate, or the Spanish words which are the equivalent? If he did not, of course, if he did investigate, if he did not threaten, then naturally you will find that the facts are not true and the defence of fair comment of course will fail. That is why I want you if you will to give very careful and important attention to this question of natural justice meted out or not meted out to these employees of the Works Department. As I have said before, I don't think any of the witnesses found any unfair treatment of the War Department employees by Mr. Sene. This is not to

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say that anyone else, even the writer of the article, anyone else is entitled to hold a contrary opinion, as if he honestly believes that War Department employees are unfairly treated by Mr. Sene he has a perfect right to comment on the opinion if the facts on which he based that opinion are true. Were the principles of natural justice lacking in Mr. Sene's treatment of employees or not in the manner alleged by the writer of the alleged defamatory article? Did he threaten these people, did he deal with them without any investigation? That is the matter for you to decide. As a matter of fact, it is a matter on which some of you may be employers and you are qualified to judge whether from what you have heard about the regulations and so on carried out, whether these people were treated with natural justice or not. Gentlemen, Mr. Sene, as I have said, he contends these words were a personal attack, one that lowers himself in other people's estimation and one which may injure him in the way of his employment, and if these facts are true, if he threatens, if he doesn't investigate complaints then I don't suppose he would commend himself very much to his employers. It is for you to judge whether that is the case and whether on the other hand the article is quite justified, because it is true and it is fair comment on Mr. Sene's actions as a Civilian Departmental Officer in the War Department.

That at the moment is all I have to say and now we are going to have a look at the evidence. I have to call your attention to some of the passages in the evidence which I have recorded. It is my duty, if you want me to read it word for word, I will do it, but otherwise I will read the words which seem to me to be material. If I have left anything out, if learned Counsel thinks I am leaving some words out, they are at liberty to say so.

COUNSEL FOR DEFENDANTS: I think it would be to impose an unfair burden on Counsel as your Lordship goes on to say whether the presentation of the evidence is fair or unfair.

JUDGE: I give you the opportunity.

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COUNSEL FOR DEFENDANTS: It is not something we can do in fairness to yourself or ourselves. All we would do would be to confuse the Jury.

JUDGE: If you think I am missing out something material, will you do so.

COUNSEL FOR THE DEFENDANTS: Our failure to do so must not be interpreted as agreeing with your Lordship's summing-up.

JUDGE: These are my notes on the evidence and I am going to read some of them to you. They are not of course verbatim, it is not humanly possible for me to write down every word spoken by the witnesses. The first witness, as you will remember, was the Plaintiff, and he started off by telling us what his job is, he is clearly in a position with a good deal of responsibility. He is a responsible man, and another point you might consider in connection with damages in general, which very important in some cases, is the question of his demeanour in the box. How did he behave in the witness box? Do you think he was a witness of truth? You may consider he gave very clear, definite, calm precise answers to the questions he was asked in both examination and cross-examination, and in my opinion he was what you might call a good witness. On the whole, when you are considering his evidence, think of the man, think of him there and what you thought of him. It is not conclusive but quite important. As you know, his evidence started by telling us what his duties are and so on. Then he came to the important point then in this case, October 7th, and he told us on that day he read "Vox", he saw an article entitled "A Touristic Journey" in Spanish, it was going to be the first of a series and he was shown the copy of "Vox", and he then gave his view of what he thought about the article. "The article referred to me, it was a personal attack, untrue and libellous, I was astounded by the attack, all the statements were either false or grossly distorted, no truth in the allegations, I have nothing in common with a Torquemada or Nero". Certainly there was nothing in common with his appearance. Anyway, he says he has nothing in common with Torquemada and Nero and it is for you to decide whether he has or not. Then

he says the manner in which he carried out his duties as referred to in the article. Then on the question of whether he sits in judgment he says he sits in judgment of the people under him, office charge, but never sits in judgment of others. Then he explained to you the organisation of the War Department, how they have got Headquarters at Engineer House and so on, a distillery, and they have six Clerks of Works in yards devoted to the building trade, for each two of the yards there are Garrison Works Officers in charge, civilians. Every two of these installations has a Garrison Works Officer and every installation has one Clerk of Works, one Foreman and a number of gangers or chargemen. "Each officer is responsible for day to day work, conduct and discipline. They are commanding officers. If a workman commits an offence the officer in charge has to deal with it. Disciplinary procedure quite straightforward. Where concerned with Civilian Staff Regulations or Army Council Instructions or local Orders, I am responsible to see these orders are not deviated from. Offences in the War Department are classified, major and minor. Minor offences skylarking etc. These minor offences are dealt with by the officer in charge of that particular installation. If one of these officers in charge has a report from a Supervisor he listens to the officer, calls for the worker who then has an opportunity to state the case, and he says he must do so. In minor offences the Garrison Works Officer listens to the accused and any witnesses. If satisfied it is a first offence he is admonished and warned verbally about future conduct. We make an investigation, we discuss the matter fully, the officer and myself discuss the matter fully and if I am satisfied there has been a contravention, a prima facie case, I send a warning letter signed by me for the Command Works Officer. That might be considered an investigation. It is not a full investigation by hearing the case, but is some form of investigation. The officer concerned discusses the matter and then Mr. Sene acting according to regulations sends a warning letter after the matter has been discussed fully. The same procedure follows for second or third minor offences. After a written warning a workman has a right, which we expect him to exercise, of a hearing with the Command Works Officer, the boss. I arrange the hearing."

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At that point, if you will remember, we came to lunch and adjourned, and then evidence was interposed, the evidence of Mr. Prescott, that I hope will help you a great deal and which will mean more to you than it does to me. He confirms the accuracy of the translation of the article as it was put in in support of the Plaintiff's case. You have the translation. We had a good deal of argument and you must give the meaning an ordinary person will give to it, about this word "encargado", and he was quite firm about the fact that "encargado", means a chargeman. It doesn't mean foreman or anyone of the rank above. He confirms that it is a literal translation. "My mission is to translate consistent with good English", and in his cross-examination says "My translation is a faithful and exact translation". I have spoken about the meaning an ordinary person would give to this article and I don't think you need bother any more about the evidence given by Mr. Prescott.

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After than Mr. Sene came back and continued his evidence and spoke of the procedure in serious cases, that is the cases involving dismissal and loss of pay. I don't think I will read you that as no such case was referred to in this case. He went on then to talk about final warning letters and you may remember there is a final warning letter in this case. It is in the file, it is the one addressed to a gentleman called Lopez. He says "if more than six months have elapsed..... Suspension only by the Command Works Officer. When criminal proceedings pending suspension is imposed." This you will remember is a matter to which the defence take objection. No letter issued without the Head of Establishment's instructions. "I should only send on discussion and decision of the Command Works Officer. If a suspended worker is found innocent he is reinstated and paid wages." Then he says "I am responsible for letters of warning. Paper work is my province. I satisfy myself regulations are followed. I never get a direct report from the chargeman or ganger." Then he goes on about the warning letters, that a workman gets a warning letter, he asks for a hearing and gets it. He says a letter of warning is not a threat. A little later he says he is personally responsible to see the letters of

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warning are in order, he considers it a fair system both to the employee and the employer. Then there is a good deal of evidence about the Matos/Moreno case. You had that in some detail yesterday and I am not going to read all the evidence again to you, what happened and how it came about that the hearing Matos asked for, that hearing, only took place after the article in "Vox" had been published. It was only on the
 10 Monday after "Vox" was published that Mr. Bainbridge was able to come back to duty and it was on that very day that Mr. Matos was given a proper hearing about his complaint. You have got a record of the hearing in that bundle. You will remember the result of the hearing was that Mr. Matos was found to be in the wrong and that warning should stand. We haven't had Mr. Matos to dispute all this and according to this witness he didn't complain after it, but he shook hands
 20 with the Command Works Officer, but not with Mr. Sene. As far as Mr. Moreno was concerned he did not ask for a hearing. He then told us about the Lopez case and told us a lot about the unpunctuality of this man. He was perpetually late and he was given a final warning. He signed that warning but didn't ask for any hearing.

Now we come to this other matter. Considerable exception has been taken to the action in this case, and this was when Matos was found
 30 with a 3/5d ruler and he was more or less automatically suspended because it was an alleged theft of War Department property. You have heard the argument of Mr. Triay who says it was an example of the abuse of the principles of natural justice. This may be a matter of interest. This is the only case in which the Plaintiff has been concerned in an order of suspension. He told you that subsequently the man was acquitted and after the acquittal was reinstated. Then we
 40 got to the evidence. He had been taken through the allegations made in the rest of the article, the allegations about the Factories Ordinance, workmen's W.C., rainfall, conditions of paying wages, etc. One thing which did emerge from it, he did make a statement subsequently proved to be wrong. He stated no rain fell that season until after the date of the article. Eventually we had a look at the Gibraltar Chronicle and found there

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 Chief Justice's
 Summing-up
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 1961
 continued

was on that day .ll slight rain. The only point is you might not accept this credibility as a witness. You might accept he has made a mistake. Later on the next morning the examination continued for a short while. I don't think there is anything there of very much importance. This question of no-one can be a delegate of the GCL if he is a higher rank than Foreman. He confirmed Mr. Bainbridge was not in Gibraltar, so he couldn't be called as a witness.

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Now we come to the cross-examination, Mr. Triay is entitled to and very properly took the Plaintiff through a very long and very searching cross-examination and we will now look at some of the things which came out in the course of that cross-examination. Firstly he was asked if he sat in judgment of employees and he said he didn't. He says "the Civilian Staff Regulations are the basis of the procedure, if we can improve on these we are not going against the spirit of the regulations if it is helpful to the men". You heard learned Counsel make statements yesterday that on occasions these regulations are not adhered to strictly according to the letter and because of that, because people are not heard before certain things were done, because of that there was a failure to observe the proper principles of natural justice. I think you can probably sort that out for yourselves. You will be given, if you want them, copies of these regulations. You have been referred to certain sections but the point which did appear in cross-examination is that the witness was quite sure it was followed to the letter where serious offences were concerned and for minor offences the procedure as in Civilian Employees Orders. These are local orders made under the power of the local people here. He said the employees can understand the regulations, there is no inconsistency between the regulations and the orders, workmen are heard and judged by their own officers as they are entitled etc., he gets a warning letter before he gets a hearing. Then these minor offences, of course, you are asked to say if it is in accordance with the principles of natural justice, if the man is entitled to be heard before disciplinary action is taken against him. Then we heard a great deal of cross-examination about this question of

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whether the Head of Establishment can delegate powers. He contends the Head of Establishment must have certain powers of delegation, he couldn't possibly do everything himself, and he then mentions the Charter but, of course, it transpired eventually he hadn't seen the Charter although some time ago he saw the Charter in another office, the Charter at CEPO. Then he was cross-examined about the Matos case. He said "see me now" and in witness's opinion the whole case was too ridiculous for words. He had a report from a responsible officer, Matos had a bad record, and he acted on that report. Then there is a good deal more about Bainbridge, why he wasn't present and so on, and then we came to another incident. You will remember the Plaintiff in his examination posed as a man always very anxious to help employees and give them advice, and there was a case extracted in cross-examination about a man called Peliza. He says he knew the man Peliza and he complained about an assault. He told him to go first to see his own officer and Mr. Sene said he would also speak to the man's officer about it. Apparently he didn't. That is a little incident which goes to show he is not always so helpful as he said he was in the course of his evidence. Then we had the question of suspension. He thinks Rule 73 covers the question of suspension. The regulation holds ".....
 It is normal to suspend War Department employees in the case of criminal offences. In all criminal proceedings it is in the public interest to suspend. I am only acquainted with suspension in the Matos case". Then we come again to this question of translation, this question of this word "encargado", and this is what Mr. Sene says about it "the natural and ordinary meaning is in charge of" and of course he would understand the meaning. "I agree the natural and ordinary meaning is in charge of, a person in charge. The meaning is very different in context."

Then we came to the relations with the Defendant and the question of maliciousness, that the person who libels him is of course of interest. He says "I know Campello, no personal dispute with him," he should not have had spite against him on the 7th October, knows of no reason why he should have. "I am going to vindicate my name and in the process I shall also vindicate my employer. One

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 Chief Justice's
 Summing-up
 18th November
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 continued

No. 25
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 18th November
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 continued

of the compelling reasons for him to bring this action was to vindicate the statement about his employers. I would not work with unfair regulations. Cannot say if any injury was intended, do not know what was behind the article. Warnings are not threats, the words were untrue. I suspend no-one, the Command Works Officer is the only one who can suspend. I do the paper work and sign for the Command Works Officer. In legal parlance my letter contained threats perhaps. The facts were distorted". He explained the error of the rainfall. The rest of the cross-examination related to the context of the rest of the article. Then we come to the cross-examination about the question of natural justice and he contends natural justice is served "without my hearing the offender". "I have made some alterations in the procedure, the procedure is completely fair, not affected by criticism." Then we came back to the letter of the Solicitors, the letter which Messrs. Triay & Triay wrote to his Solicitors. He doesn't agree that the paragraph was an endeavour to be friendly or accept terms. He agrees the door was not closed for apology, he says your terms are not acceptable. He considered it was a trap unfair to him and also unfair to his employers. They stated their terms and even right up to the trial after the issue of the Writ the "Vox" was still open to negotiation but Defendants didn't take advantage of the opportunity to his satisfaction. He was then re-examined after the cross-examination and there he confirmed the statements to the effect they are not true, "I considered I was definitely compared to Nero and Torquemada, I was definitely defamed. The allegation is untrue and it is obviously a personal attack on me". He also mentions this question of threat. He contends the threat in the article had a sting. A warning letter is not a threatening letter particularly in relation to the Spanish translation of the word threat.

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As I said before, I tried to pick out the extracts I thought would help you. Now we come to the next witness, Mr. Stanley Cooper and he of course knows Mr. Sene very well. He told us he was the Administrative Officer of the whole depot and he takes queries to Mr. Sene when any matter

crops up and he knows of course the procedure in the War Department. It may of course be contrary to natural justice, but he is telling you what the procedure is. He says minor offences are dealt with by a chargehand or a Clerk of Works, brought to me by the Clerk of Works if serious, then I should see the worker and hear what he has to say. He usually admonishes verbally. The next step would be to go to Mr. Sene and ask him to send a warning. You remember on one occasion he tried to get Mr. Sene to do something but he said it was against regulations, the workers were right and he was wrong and he refused to take action. I think there is no doubt at all Mr. Sene is certainly a stickler for regulations, procedure, as of course he should be. Then he says he deals with Mr. Sene on the men's problems, the men are more than satisfied, he is extremely helpful. He remembers the "Vox" article and as it related to another Mr. Cooper he took some interest in it. "In my opinion Mr. Sene gives the benefit in the slightest doubt to the employee. He interpreted the regulations and formed an opinion." That was what Mr. Cooper says. Being 24 years in the War Department and two years in Gibraltar, he no doubt knows a good deal of what goes on in the War Department. Then we had another short submission the following morning.

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Summing-up
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1961
continued

And then we come to the evidence of Mr. Mor. Mr. Mor is the General Secretary of the Gibraltar Federation of Labour. The comments made by the Defendants, of course, is that Mr. Mor is a biased witness, and he may have some cause to be biased in connection with some dispute between the two Unions, his Union and the GFWU, but at least it was conceded that if he had a bias it was what might be termed honest bias, and he told you that he was the General Secretary of the Gibraltar Federation of Labour and he had known the Plaintiff personally for eight or nine years. He has seen him on occasions on behalf of workmen. He is helpful. He is acquainted with the warning letters and he doesn't think they are threats. Workmen have an opportunity to be heard. It is provided in the regulations that men may be advised by a Union representative or a friend. The procedure is quite fair, there are safeguards, is not harsh, no injustice. If a warning letter is

No. 25
 Chief Justice's
 Summing-up
 18th November
 1961
 continued

given a man may mend his ways. He considered the attack in "Vox" not justified. He says incidentally that this word "encargado" is normally understood by workmen to mean a chargeman, leading hand or possibly a foreman. Then he was cross-examined and he made a perfectly true statement, he said other people may have an honest but mistaken different opinion about the War Department. A man is entitled to criticise and he may use strong language in doing so subject to the Law of Libel. "Mr. Sene is very helpful, a man has a right to a hearing after a written warning, a man can challenge a warning, can appeal against a warning. It is not a decision by Mr. Sene, he is acting for the Command Works Officer." Then in the cross-examination we had evidence that there might have been some friction between his Union and the GFWU, and of course it may be true. This might affect his judgment where the GFWU is concerned. He was examined again. He said in re-examination: "Workmen have a hearing rather than an appeal. They could go further to the Command Secretary or the Brigadier."

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Very often of course in a case of this sort I have to go on and I take you through the evidence of the Defendants.

(Comments on there being no evidence for the defence as the Defendants had not given evidence from the witness-box)

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You heard the submissions of learned Counsel on either side and I have no doubt you will keep them very much in your mind and I hope you will keep what I have said in mind when you go to consider your verdict. You have had the issues clearly set out for you here. Take these 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.

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(Invites both Counsel for the Plaintiff and the Defendants to direct his mind to any point of law on which they felt he should direct or further direct Jury before concluding his summing-up).

FOREMAN: Must we bring a unanimous answer to every question?

JUDGE: In the first place yes, and later on if you don't agree

FOREMAN: I was referring to the first instance.

JUDGE: First instance, yes.

You have the pleadings, you have the correspondence, you have got the Regulations if you want them, and if you want me to give you any further guidance on any other point, anything you want me to read, please say so. Perhaps you will retire now gentlemen and consider your verdict.

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Chief Justice's
Summing-up
18th November
1961
continued

No. 26
 Questions to
 Jury and
 Replies
 18th November
 1961

No. 26

QUESTIONS TO THE JURY AND THEIR REPLIES

QUESTIONS

REPLIES

Have you agreed on your
 verdict?

Unanimously

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.

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2. Insofar as you find that
 they are statements of
 facts are such statements
 of facts true?

2. No.

3. Insofar as you find that
 they are expressions of
 opinion, do such
 expressions of opinion
 exceed the limits of fair
 comment?

3. Yes.

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4. Were the Defendants actuated
 by malice?

4. Yes

5. Damages

5. £600.

No. 27

JUDGMENT

No. 27
Judgment
18th November
1961

s.) DATED and Entered the 18th day of November, 1961

Entered
23rd November
1961

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THIS ACTION having on the 13th, 14th, 15th, 16th, 17th and 18th days of November 1961 been tried before the Honourable Mr. Justice Hubert J.M. Flaxman, C.M.G., with a Special Jury and the Jury having found a verdict for the Plaintiff for £600. 0. 0. and the said Mr. Justice Hubert J.M. Flaxman, C.M.G., having ordered that judgment be entered for the Plaintiff for £600. 0. 0. and costs.

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THEREFORE IT IS ADJUDGED that the Plaintiff recover against the Defendants £600. 0. 0. and his costs to be taxed.

(Signed) JOHN E. ALCANTARA

Registrar.

No. 28
 Notice of
 Motion for
 new Trial
 1st December
 1961

No. 28

NOTICE OF MOTION FOR NEW TRIAL

TAKE NOTICE that this Honourable Court will be moved on Wednesday the 13th day of December 1961 at 10.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the Defendants for an Order that the verdict of the Special Jury and the Judgment of Mr. Justice Hubert J.M. Flaxman given thereon at the trial in this action on the 18th day of November, 1961 be set aside and a new trial be had between the parties or alternatively that Judgment be entered in the action for the Defendants with costs of the action and for an Order that the Plaintiff pay to the Defendants the costs of and occasioned by this application.

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AND FURTHER TAKE NOTICE that the grounds of the application are that:-

1. That all the facts necessary to establish that the facts on which the comment was based were true in substance and in fact being admitted, there was no evidence to go to the jury that the statements of fact contained in the words complained of were untrue either in substance or in fact and the Judge ought to have removed this issue from the Jury.

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2. That the finding by the Jury that the words complained of in so far as they contained statements of fact were untrue in substance and in fact, cannot be supported by the evidence or alternatively is against the weight of evidence.

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3. That the Judge having ruled that the occasion was privileged in that the words complained of related to a matter of public interest there was no evidence fit to be submitted to the Jury that the comment was unfair or exceeded the bounds of fair comment and that the Judge wrongly failed to remove the issue of whether or not the comment was fair from the Jury.

4. That the finding by the Jury that the comment was unfair cannot be supported by the evidence or alternatively was against the weight of the evidence.

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5. That there was no evidence of malice in the publication of the words complained of fit to be submitted to the Jury or at all and that the learned Judge wrongly failed to remove the issue of malice from the Jury.

No. 28
Notice of
Motion for new
trial
1st December
1961
continued

6. That the finding by the Jury that there was malice in the publication of the words complained of cannot be supported by the evidence or alternatively is against the weight of evidence.

10 7. That the learned Judge was wrong in law when he overruled the submission of Counsel for the Defendants that there was no evidence to go to the Jury at the end of the Plaintiff's case.

8. That the verdict cannot be supported by the evidence or alternatively was against the weight of evidence.

20 9. That in the absence of malice the damages are unreasonable and excessive and that the Jury in assessing the damages must have taken in consideration the question of malice of which there was no evidence.

10. That the learned Judge misdirected the Jury as to the defence of fair comment and the legal effect and consequences thereof.

30 11. That the learned Judge misdirected the Jury as to the Defendants' right to succeed on the defence of fair comment even if the comment or inference drawn or capable of being drawn therefrom be untrue and defamatory of the Plaintiff.

12. That the learned Judge misdirected the Jury that the evidence given by the Plaintiff as to his own opinion that the words complained of were defamatory and constituted a personal attack and exceeded the bounds of fair comment was evidence relevant to the issue of whether or not the comment was fair.

40 13. That the learned Judge misdirected the Jury that the Defendants only relied on the specific instances particularised under paragraph 3 of the Defence in support of the allegations of fact in

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 Notice of
 Motion for
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 1st December
 1961
 continued

the words complained of and failed to direct them that the Defendants relied on the said letters only as evidence of the Plaintiff's course of conduct which the Plaintiff admitted.

14. That the learned Judge misdirected the Jury by his failure to direct them that where the libel is stated as a general conclusion founded on certain incidents, it would suffice if the Defendants proved sufficient facts to justify the general conclusion.

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15. That the learned Judge misdirected the Jury in failing to direct them that the Defendants had to prove the truth of only such statements as added to the sting of the libel and further failed to direct the Jury as to where the sting of the libel (if any) in the words complained of lay or might lie.

16. That the learned Judge misdirected the Jury that before the Defendants, not being the person who wrote the words complained of, could succeed in the defence of fair comment it was necessary for them to prove that the person that wrote the words complained of must be expressing an honest and not a malicious opinion.

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17. That the learned Judge misdirected the Jury in that he confused malice or the possibility of malice on the part of the writers of the words complained of, and not before the Court, with the malice or possibility of malice on the part of the Defendants.

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18. That the learned Judge misdirected the Jury in that he failed to direct them as to the effect of the decision in Lyons v. The Daily Telegraph (1943) 1 K.B. 746 as to the duties of newspapers with regard to letters sent to them for publication.

19. That the learned Judge misdirected the Jury that they could infer malice from the recklessness of the Defendants and from the failure by the Defendants to apologise for misstatements they knew to be false or unfair, there being no evidence of either recklessness on the part of

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the Defendants, or of a failure to apologise for misstatements known by them to be untrue.

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Notice of
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1st December
1961
continued

20. That the learned Judge misdirected the Jury that they could infer malice from the violence of the language of the actual words complained of in the action.

21. That the learned Judge misdirected the Jury that they could infer malice from the failure of the Defendants to call evidence.

10 22. That the learned Judge misdirected the Jury that it had not been established that the words complained of had been written by the Gibraltar Free Workers Union (GFWU).

20 23. That the learned Judge misdirected the Jury that the words "threatens workmen" in the context of the words complained of were capable of a defamatory meaning in that the word "threatens" might have been understood to mean "threatens unlawfully" and/or "physically", although there was no innuendo in the statement of claim that the word "threatens" was understood other than according to the plain and ordinary meaning of the said words in the said context.

24. That the learned Judge misdirected the Jury as to the plain and ordinary meaning of the word "threatens" in the context of the words complained of and in the absence of an innuendo alleging a defamatory or special meaning.

30 25. That the learned Judge misdirected the Jury in that he failed to direct the Jury that the natural and ordinary meaning of the word "encargado" as admitted in the Plaintiff's evidence and that of his witnesses and the Spanish-English dictionaries adduced in support was "person in charge."

26. That the learned Judge misdirected the Jury in stating to them that "the libel if there is one, is contained in the Spanish language not in the translation".

40 27. The words complained of having alleged that the Plaintiff threatened or suspended workers on

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 Notice of
 Motion for
 new Trial
 1st December
 1961
 continued

the strength of a report without pausing to make investigations the learned Judge notwithstanding the principles of natural justice which require that the accused be given a hearing and notwithstanding the provisions of Civilian Staff Regulations and Civilian Employees Orders which similarly require the accused to be given a hearing, misdirected the Jury that consideration of the report of the accusing officer with the said accusing officer making same and in the absence of the accused might be considered an investigation of the allegations in the report.

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28. That the learned Judge misdirected the Jury that the Defendants had compared the conduct of the Plaintiff to the era of the Neros and the Torquemadas when the said words did not and could not refer to the Plaintiff but to the procedure whereby warning letters containing threats of dismissal were sent to War Department employees without prior investigations. The learned Judge further misdirected the Jury that such a comparison was capable in law of exceeding the bounds of fair comment.

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29. That the learned Judge misdirected the Jury that by the use of the words complained of "as if we lived in the era of the Neros and the Torquemadas" the Defendants had compared the personal characteristics of the Plaintiff to the personal characteristics of Nero and Torquemada and that the Defendants had called the Plaintiff a Nero and Torquemada.

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30. The learned Judge, in the course of his reference to the Plaintiff's evidence misdirected the Jury that it was for ~~them~~ to decide whether the Plaintiff in fact had anything in common with Torquemada and Nero whereby the Jury were led to believe that if the Plaintiff did not have anything in common with the said Torquemada and Nero, their verdict must be for the Plaintiff.

31. That the learned Judge misdirected the Jury that the issue on the question of that part of the words complained of which consisted of comment was what it meant in its plain and ordinary meaning.

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32. That the learned Judge misdirected the Jury

by inviting the Jury to use their own standards as employers in determining whether in their opinion the Plaintiff treated his employees according to the principles of natural justice.

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Notice of
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1st December
1961
continued

33. That the learned Judge misdirected the Jury that the issue, or one of them, to be decided by them was whether the Plaintiff in their opinion acted in accordance with the principles of natural justice in the treatment of civilian employees.

10 34. That the learned Judge failed to direct the Jury that the principles of natural justice require that any person against whom a charge of any kind is brought be given a hearing before action is taken against him or his guilt recorded against him.

20 35. That the learned Judge invited the Jury to draw inferences unfavourable to the Defendants for their failure to give evidence without directing them what inference might be drawn in law, whereby the Jury were led to believe that it was for the Defendants to prove affirmatively by adducing their own evidence that the comment was an honest expression of their own views, did not exceed the bounds of fair comment and were not actuated by malice.

30 36. That the learned Judge misdirected the Jury that the procedure laid down for minor offences in Civilian Employees Orders was different from the procedure laid down in Civilian Staff Regulations and further that Civilian Staff Regulations only applied to serious offences and generally failed to direct the Jury as to the true interpretation of Civilian Staff Regulations and Civilian Employees Orders.

40 37. That the learned Judge misdirected the Jury in that by using the words following: "I think there is no doubt at all Mr. Sene is certainly a stickler for regulations, procedure, as of course, he should be", he prejudged an issue of fact in a manner that could not be supported by the evidence.

38. That the learned Judge misdirected the Jury that the conduct of the Defendants since the publication of the words complained of was a ground which they were entitled to consider on the

No. 28
 Notice of
 Motion for
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 1st December
 1961
 continued

issue of malice and in awarding damages without regard to the Defendants' case throughout that no libel on the Plaintiff had been intended or published and further without regard to the Defendants offer before action to state so publicly thereby vindicating the Plaintiff's character.

39. The Defendants having offered to explain publicly that the words complained of did not refer to the Plaintiff in his personal capacity but to the manner in which he discharged his public office and having maintained this attitude throughout the trial, the learned Judge misdirected the Jury that the absence of any retraction was a matter which they were entitled to take into account as aggravating the damages. 10

40. The Defendants having based their case on the evidence of the Plaintiff and the admissions made by him, the learned Judge misdirected the Jury that the Plaintiff's demeanour in the box was a consideration which would affect the measure of damages in his favour. 20

41. The learned Judge misdirected the Jury in stating "They (the Defendants) will say that the evidence outweighs the evidence which the Plaintiff has produced in this case, outweighs his allegations that he has been defamed" thereby leading the Jury to believe that the case depended on an issue of credibility and that if they believed the Plaintiff they had to return a verdict in his favour. 30

42. The learned Judge misdirected the Jury by inviting them to decide whether the Plaintiff was a witness of truth without directing them on the true nature of the Defence which was based on the very admissions in the Pleadings, Answers to Interrogatories and the Plaintiff's evidence and that of his witnesses and not on the lack of credibility of the Plaintiff's evidence.

43. That the learned Judge misdirected the Jury that as a matter of fact and law the words complained of were libellous and would be found so by the ordinary man. 40

44. That the learned Judge misdirected the Jury in that he failed to direct the Jury on the true nature and substance of the Defence and the Defendants' case and on the evidence in support thereof.

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10 45. The interventions of the learned Judge during the cross-examination of the Plaintiff were ill timed in that they tended unfairly to shelter the witness and confuse and cloud the effect of the witnesses' own answers.

46. The general tenor of the summing-up of the learned Judge was dominated by reference to the Plaintiff's justification of his actions in the course of the performance of the duties of his office that it must have inevitably tended to induce the Jury to believe that there was no evidence in law on which a verdict for the Defendants could be returned.

20 47. In the summing-up the learned Judge used expressions which tended unfairly to further the Plaintiff's case and prejudice the Defendants' case in the minds of the Jury.

48. The ~~summing-up~~ was so unprecise and loosely worded as to create confusion on the issues of law and fact in the minds of the Jury.

DATED the 1st day of December, 1961.

(Signed) TRIAY & TRIAY

Solicitors for the
Defendants

30 TO: The above-named Plaintiff
and to Messrs. Isola & Isola his Solicitors

No. 29

ORDER DISMISSING MOTION FOR NEW TRIAL

WEDNESDAY the 13th day of December, 1961

Before the Honourable Mr. Justice Hubert
J.M. Flaxman, C.M.G.; Chief Justice.

IN COURT

10 UPON HEARING John J. Triay, Esquire and
Joseph E. Triay, Esquire, Counsel for the
Defendants and Peter J. Isola, Esquire Counsel
for the Plaintiff AND UPON READING the Notice of
Motion for a new trial herein dated the 1st day
of December, 1961, IT IS ORDERED that the said
Motion be dismissed and that the costs of and
incidental to this Motion do abide by the result
of the appeal.

(Signed) John E. Alcantara

Registrar.

No. 30

ORDER GIVING FINAL LEAVE TO APPEAL

TUESDAY the 20th day of February, 1962

20 Before the Honourable Mr. Justice Hubert
J.M. Flaxman Kt., C.M.G., Chief Justice

IN COURT

30 UPON HEARING John J. Triay, Esquire and
Joseph E. Triay, Esquire, Counsel for the
Defendants and Peter J. Isola, Esquire, Counsel
for the Plaintiff AND UPON READING the Notice of
Motion herein dated the 6th day of February,
1962, IT IS ORDERED that the Defendants do have
final leave to appeal to Her Majesty's Privy
Council against the Judgment herein dated the
18th day of November, 1961, and that the costs of
this Motion shall abide by the result of the
appeal.

(Signed) John E. Alcantara.

Registrar

No. 29

Order dismissin
Motion for New
Trial - 13th
December, 1961

No. 30

Order giving
final leave to
Appeal 20th
February 1962

Exhibits
Defendants'
Exhibits.

E X H I B I T S
DEFENDANTS' EXHIBITS

A21. - LETTER, J.C. SENE TO J. MARTIN MORENO

CONFIDENTIAL.

A21.
Letter to
J. Martin
Moreno.
12th July 1960.

Subject:- Discipline. WD Works Organisation HQ.
Gibraltar.

Tele: No. F338
4131E.

12th July, 1960.

Memo for:-

Mr. J. Martin Moreno
Mason E.P.12.

10

WARNING

It has been reported that your output of work is very low and I am to inform you that unless there is an improvement in general, your dismissal in accordance with paragraph 440 of Civilian Staff Regulations 1950 will be recommended to CEPO.

TRADUCCION

AVISO

Ha sido reportado que su produccion de trabajo es bastante baja y le informo que a menos que Vd. mejore su produccion en general, se recomendara su despido al C.E.P.O. de acuerdo con el parrafo 440 de los reglamentos para empleados Civiles de 1950.

20

(Sgd.) J.C. SENE

For Command Works Officer.

Copy to:- CEPO

CW S (2) - Please hand original and get his signature on the attached copy acknowledging receipt of warning. The signed copy should be returned to this HQ.

30

A1. - LETTER, J.C. SENE TO A. MATOS

CONFIDENTIAL

Exhibits
Defendants'
Exhibits.

Subject:- Discipline W.D. Works Organisation
HQ. Gibraltar.

A1.

Tele: No. F338 12th July 1960.
4131E.

Letter,
J.C. Sene to
A. Matos.

Memo for:-

12th July 1960.

Mr. A. Matos,
Mason EP 74.

10 It has been reported by your Garrison Works
Officer, Mr. Bainbridge, that when he drew your
attention this morning to poor output in the work
allotted to you, you were insolent in your reply
to him.

You are hereby officially warned about the
two offences, i.e. insufficient output of work and
insolence to a superior officer, and I am to in-
form you that if there is a repetition of these or
if any other shortcoming is reported, I will have
20 no alternative but to recommend your discharge.

(Sgd.) J.C. SENE,

/HN

For Command Works Officer.

A2. - LETTER, J.C. SENE TO H. LOPEZ

CONFIDENTIAL

A2.

Tele: F 398 W.D.Works Organisation HQ,
4131E. Gibraltar.

Letter,
J.C. Sene to
H. Lopez.

2nd August, 1960.

2nd August,
1960.

Memo for:-

30 Mr. H. Lopez,
LNG, 11 Carpenter.

Final Warning.

It has been reported that you continue to be
a persistent late attendant to work in spite of
having been warned by CEPO on the 2 Feb. '59, I am
to inform you that unless you correct your short-
comings immediately, your dismissal in accordance
with para 162 (d) of Civilian Staff Regulations
1950, will be recommended to CEPO.

J.C. SENE,

40 Copy to CEPO
Clerk of Works LNG (2)

For Command Works Officer.

markings of the War Department and our client on being questioned about how he had acquired it, explained that it had been given to him seven months ago, by an outsider to the War Department.

Exhibits
Defendants'
Exhibits.

A3.

Letter,
Messrs. Triay
& Triay to the
Commissioner
of Police.

10th September,
1960
- continued.

10 The rule in question is the one used by our client for his work exclusively, and he had been taking it in and out of his work for this purpose for the last seven months. He is not supplied with any War Department tools at his work nor is he paid any sum out of which he is to supply himself and hence when he was given this rule seven months ago he was pleased to accept it, for the purpose of better performing his duties at work. The value of the rule in question would appear to be roughly 4/6d. and having regard to this fact to the circumstances leading up to the finding of the rule in our client's possession and to the fact that it is not unusual to find War Department property in civilian hands outside the War De-
20 partment in circumstances which are not fraudulent, it would appear to us that there is an element of victimisation in the conduct of the police constable in question towards our client.

Mr. Matos is an ordinary working man whose conduct as far as we know has been good throughout and he is naturally concerned and perturbed at the incident which we mention above.

30 We would be much obliged if you will inform us whether it is intended to take any action against our client so that this matter can be settled one way or the other with the minimum of anxiety to Mr. Matos.

Yours faithfully,
(Sgd.) TRIAY & TRIAY.

A5. - LETTER, J. C. SENE TO A. MATOS.

A5.

CONFIDENTIAL

WD Works Organisation HQ.
Gibraltar.

Letter,
J.C. Sene to
A. Matos.

15th September,
1960.

40 Tele: No. F338
4131E.

15th September, 1960.

Memo for:-
Mr. A. Matos,
Mason VQ.88.

I am to inform you that in consequence of the

Exhibits
Defendants'
Exhibits.

charge which has been brought against you by the Police, you are suspended from duty until further notice in accordance with Para. 73 of Civilian Staff Regulations 1950.

A5.

Letter,
J.C. Sene to
A. Matos.

J.C. SENE,
For Command Works Officer.

15th September,
1960
- continued.

A4.

Letter,
J.C. Sene to
A. Matos.
15th September,
1960.

A4. - LETTER, J. C. SENE TO A. MATOS

CONFIDENTIAL

By Registered Post.

WD Works Organisation HQ.
Engineer House,
Engineer Lane,
Gibraltar.

10

Tele: No. F338,
4131E.

15th September, 1960.

Memo for:-

Mr. A. Matos,
Mason No. 88.
8, Palace Gully,
Gibraltar.

I am to inform you that in consequence of a report received from the Gibraltar Security Police, which is under consideration, you are suspended from duty until further notice in accordance with Para.73 of Civilian Staff Regulations 1950.

20

This memo cancels my earlier one 4131E of even date, handed to you this morning when you reported for work at Viney Quarry.

J. C. SENE,
For Command Works Officer.

A6. - LETTER, COMMISSIONER OF POLICE TO SUPERINTENDENT, GIBRALTAR SECURITY POLICE
MEMORANDUM FROM COMMISSIONER OF POLICE

Ref. No. 0270.

To Superintendent,
Gibraltar Security Police.

I forward herewith a letter from Messrs. Triay & Triay erroneously addressed to me.

10 2. You will note that it makes certain allegations against a member of your Force to which you may wish to reply direct.

3. I have given instructions that the decision whether or not to prosecute Matos will be delayed pending the result of the enquiries which, no doubt, you will wish to make. I shall be grateful, therefore, if in due course, you will inform me of the result of your enquiries in order that I may inform Messrs. Triay & Triay whether their client is to be proceeded against.

20 P.G. OWEN,

For Commissioner of Police.

20.9.60.

Copy to Messrs. Triay & Triay.

A7. - STATEMENT AND PARTICULARS OF OFFENCE
REGINA v. A. MATTO

Regina v. Antonio Matto

STATEMENT OF OFFENCE

C.I. Department,

26th September, 1960.

30 Unlawful possession, contrary to Section 135 (1) of the Criminal Offences Ordinance 1960.

PARTICULARS OF OFFENCE

Antonio Matto in Gibraltar on the 8th day of September, 1960 was found in possession of a 2 foot fold boxwood ruler reasonably suspected of having been stolen or unlawfully obtained.

Exhibits
Defendants'
Exhibits.

A6.

Letter,
Commissioner
of Police to
Superintendent
Gibraltar
Security Police.

20th September,
1960.

A7.

Statement and
Particulars
of Offence.
Regina v.
Matto.

26th September,
1960.

Exhibits
Defendants'
Exhibits.

A8. - TRANSCRIPT OF CLERK'S NOTE - POLICE v. A.
MATTO.

IN THE CITY AND GARRISON OF GIBRAITAR

In the Magistrate's Court

Before Sir Ragnar Hyne, Stipendiary Magistrate.

THURSDAY, the 29th day of September, 1960

TRANSCRIPT OF CLERK'S NOTE.

A8.
Transcript of
Clerk's Note.
Police v.
A. Matto.
29th September,
1960.

Police v. Antonio Matto (Mr. J.E. Triay)
Unlawful possession
(Sec. 135(i))

10

Plea: Not Guilty.

Inspector Taylor prosecutes.

RICHARD MOR, sworn:

I am a Gibraltar Security Police Sergeant,
No.10.

At 4.45 p.m. on 8.9.60 I was on duty at Wind-
mill Hill - Devil's Bellows.

My duty was to outmuster civilian workers.

I searched the Defendant inside the station
and in his right hand trouser pocket I found a 2
foot rule - this one. It has W.D. markings which
I point out. I asked the Defendant to whom it
belonged and he replied: "It's mine. I had it
exchanged for an old one by a friend of mine but
I will not tell you his name".

20

I told him it was W.D. property showing him
the markings. I told him: "Don't you know you
are not supposed to take any W.D. property out of
the area without a written permission to do so.
How is it that you have not left it at your place
of work"? He replied: "Because I do odd jobs
outside and I use it".

30

I told him I was not satisfied with his
answer and that I was retaining the ruler until I
had made further enquiries.

Matto replied: "You can keep it".

As a result of my enquiries I saw Matto at
11.45 a.m. on the 12th, at his place of work. I
showed him the ruler I had taken from him and
asked if he had any further explanation with ref-
erence to the ruler and he replied: "I can only

40

tell you what I told you the last time. That I had it exchanged by a friend of mine but I will not tell you his name".

I arrested the Defendant and cautioned him. I told him I was arresting him for unlawful possession of a ruler. He said: "This case is already in the hands of a lawyer thro' my brother".

10 I then brought him in G.S.P. Land Rover to Gibraltar Police C.I.D. Office and handed case to Sgt. Sanchez.

Cross-Examined:

I am a Gibraltarian. I am well familiar with Gibraltar. In G.S.P. since 1944.

I searched Matto because we have to search workers going out - not everybody.

I search those that are sent in to me by the constable who is outside - or the Sergeant.

I sometimes choose who ought to be searched.

20 Fact we pick on a particular man does not mean we suspect him of anything - it is routine - token search to keep workers reminded there is power to search and because W.D. is daily losing property.

The Defendant did not want his bag to be searched.

I was not on duty on the 7th.

I read all the reports and I know Defendant was searched on the 7th. I don't think anything was found on him on the 7th.

30 I do not know if there was an incident between Defendant and the Police on the 7th.

Normally if a man is searched on the 7th and nothing is found it is not usual to pick on him again - sometimes you don't look at their faces you just send them in for searching.

If we recognise him as having been searched on previous day we may not send him in on the following day.

On the 8th he did not want his bag to be searched.

40 On the way out the Constable got hold of his bag and tried to open it - you can search a bag outside.

Exhibits
Defendants'
Exhibits.

A8.

Transcript of
Clerk's Note.
Police v.
A. Matto.

29th September,
1960

- continued.

Exhibits
 Defendants'
 Exhibits.

A8.

Transcript of
 Clerk's Note.
 Police v.
 A. Matto.
 29th September,
 1960
 - continued.

Defendant said he wanted to be searched inside the station - even his bag. The Constable agreed with this and Defendant went inside and placed the bag on a table. He offered no further resistance to being searched.

He wanted to be searched inside. Had he agreed to have his bag searched outside nothing would have happened. There was nothing in the bag. The ruler was on his person.

By being difficult Police may feel he had a guilty conscience. If he would have realised this he should not have insisted on going inside and risk being searched.

10

By not wanting his bag to be searched it was suspicious. Sometimes we search bags.

I can't say if Matto was trying to hide the rule from us.

There are extensive W.D. sales to public in Gibraltar. There are things sold from lorries down to shoe brushes - not 2 foot rulers that I know of. This kind of rule has not been sold. I do not know if any rules have been stolen.

20

I know W.D. markings in Gibraltar means nothing. I would not say person was in possession of stolen goods because they have W.D. markings. I would not be suspicious because a person has in his possession property with W.D. markings.

All these rules you now show me have W.D. markings. If you say they have been purchased I'll agree with you.

30

These 2 tape measures you now show me and shoe brush have W.D. markings. If you say you bought them at Emporium I would not disagree with you.

The explanation Defendant gave me was not satisfactory.

I have been concerned with this case right through.

I have not seen the correspondence between your firm and the Commissioner of Police.

40

(Mr. Triay reads the letters).

Value of rule is 3/5d.

Defendant is not issued with tools.

Defendant does require a ruler for his work.

Re-Examined:

The Defendant was aware he could be searched. Bags are searched outside the building - when they are going to have a person searched they are sent inside. They can be searched every day.

10 I gave the Defendant a chance to explain possession of ruler on 2 occasions - had he given me the name of the man he mentioned I would have gone to interview the man and if I verified what he said was true I would not have arrested the Defendant. I arrested him because he did not give me a satisfactory explanation.

If a worker refused to have his bag searched it would arouse my suspicion.

RAYMOND GEORGE CHURCHARD, sworn:

20 I am Storeman Technical Bl. R.A.O.C. employed as Stores Superintendent to clothing and general stores Group R.A.O.C. As store Superintendent I am responsible for issue, receipts and maintenance of stock.

I have been here 2 years 8 months and we have disposed of none of these articles. - Exhibit A.- This ruler would not be disposed of or condemned - it is a serviceable item. Value 3/5d.

Cross-Examined:

There are no rulers missing from my stock. None have been stolen.

30 These other rulers shown to me - Exhibit B. are identical articles to Exhibit A. Also W.D. property - not serviceable.

If disposed of they are returned to "return stores group".

This ruler (part of Exhibit B) is very dirty and in loose condition - there is a difference in colour.

They are used by Carpenters and R.E. fitters not for office work.

The edge of this one (part of Exhibit B) is out of line.

40 One is slightly warped - most important it should not be.

(Rulers are examined and compared by Magistrate who says old one seems less warped than (Exhibit A) new one).

Exhibits

Defendants' Exhibits.

A8.

Transcript of Clerk's Note. Police v. A. Matto.

29th September, 1960

- continued.

Exhibits
Defendants'
Exhibits.

A8.

Transcript of
Clerk's Note.
Police v.
A. Matto.
29th September,
1960
- continued.

This brush now shown to me is W.D. property - it's numbered. I think there have been disposals of these items.

It would surprise me to hear your wife bought this brush at the Emporium because W.D. markings should be erased.

It would not surprise me to hear the markings are not erased sometimes.

These tape measures now shown to me are also W.D. property. Unless they are badly worn they should not be disposed of. These should not have been disposed of.

10

If a ruler such as is shown to me is disposed of it should be broken down for salvage.

I have not come across people with property with W.D. markings in Gibraltar.

Our present stock of rulers - 49.

They are mainly used by R.E.M.E. or R.E.units.

I cannot say if civilian could be issued with a ruler such as this. This depends on employer. A mason needing one might be issued with one if his employer granted authority.

20

This ruler (Exhibit A) has not been stolen from our stores. I have correct number.

A Board of Survey is carried out by unit. My O/C does the survey and if unserviceable goods are declared so to be, they go to store - they are broken up, not sold. They are destroyed.

Not Re-Examined.

DOMINGO SANCHEZ, sworn:

30

Detective Station Sergeant No.1. At 11.45 p.m. on the 12th September Richard Mor, S.P. Sergeant, brought Defendant to my office and in Defendant's presence said: "I have arrested this man on charge of unlawful possession of a Government ruler", and produced it. "His explanation is he exchanged it for an old one but does not want to say who exchanged it for him".

I cautioned Defendant, and said: "I want to make your position quite clear. You have been arrested because you have been found in possession of this ruler and have not given a satisfactory explanation. You have to satisfy us how you came

40

to be in possession of this ruler. If you want time to consult the man who gave you the ruler you can do so".

He said: "I would rather hang before mentioning his name". I said: "Then you will be charged with unlawful possession of the ruler" and I bailed him out till yesterday and charged him under S.135 of the Cr.O.Ord. He made no reply.

Cross-Examined:

10 I have been investigating this case. I have seen the letter you sent to the Commissioner of Police. (Witness reads copy) and says, it is a copy of the letter (put in).

Not re-examined.

Case for prosecution.

20 Mr. Triay submits there is no case to answer. No reason why Defendant should have to give an account. Burden to prove possession is unlawful is on prosecution. Prosecution have to prove goods are reasonably suspected of having been stolen or unlawfully obtained - "there is no such evidence".

No reasonable suspicion goods have been stolen or unlawfully obtained.

Reads Section Technical - charged with possession - proper charge would have been "carrying".

Defendant was deprived of property before charged.

Inspector Taylor: "I have nothing to say".

30 Court: Unlawful possession cases are extremely difficult.

Evidence of S/Sgt. Churchard - Nothing missing from stock. Good deal of W.D. property is sold

I must come to conclusion it would be improper to convict Defendant and he is accordingly discharged.

Exhibits
Defendants'
Exhibits.

A8.

Transcript of
Clerk's Note.
Police v.
A. Matto.

29th September,
1950
- continued.

Exhibits

Plaintiff's
Exhibit

PLAINTIFF'S EXHIBIT

A22. - LETTER, J.C. SENE TO A. MATOS

A22.
Letter,
J.C. Sene to
A. Matos.
30th September,
1960.

COPY/MR

WD. Works Organisation H.Q.
Gibraltar.

Tel: No. F338
3931E.

30th September, 1960.

By Registered Post

Memo for:-
Mr. A. Matos,
Mason No.88,
8, Palace Gully,
Gibraltar.

10

Reference this office memo 4131E dated 15th
September, 1960.

Your suspension from duty ceases as from to-
day and you are requested to report for work at
Viney Quarry on Monday 3rd October, 1960 at 0730
hours.

(Sgd.) J.C. SENE

Copy to: CEPO For Command Works Officer.
GWO (C).

20

A23.

Minute of
interview
given to
A. Matos.
10th October,
1960.

A23. - MINUTE OF INTERVIEW GIVEN TO A. MATOS

Minute

Reference Folio 63.

Mr. Matos, accompanied by friends Mr. Netto
and Mr. Luque who claimed to be the President and
Secretary respectively of the Gibraltar Free
Workers Union, were given an interview with Mr.S.
H.Barr, Area Works Officer, and Mr. J.C. Sene,
Administration Officer at 2 p.m. on Monday 10th
October, 1960.

30

The interview was in connection with the
warning given to Mr. Matos and about which he had
requested a personal hearing with the Area Works
Officer.

At the commencement of the interview Mr. Sene
outlined the procedure laid down for disciplinary
questions as follows:-

If a workman committed an offence, such as
persistent bad timekeeping, poor output of work,
insolence to superiors etc., which did not involve

40

immediate dismissal or similar severe punishment, it was reported to the A.W.O. and Officer i/c Admin. The latter after obtaining full details, sent out a warning to the workmen concerned. On receipt of the warning, the workmen had to sign a copy acknowledging receipt.

If the workman considered the warning unjustified he had a right to ask for a hearing and was given one.

10 In the case of Mr. Matos, this procedure had been followed as proved by the interview in progress.

It was further explained by Mr. Sene that when Mr. Matos asked for a hearing on receipt of warning a date was fixed for 18th July 1960 but that in consequence of Mr. Bainbridge having been taken ill on that date, the hearing was left in abeyance pending the return of Mr. Bainbridge to duty.

20 Mr. Bainbridge had now returned to work on 10th October 1960 and therefore Mr. Matos was being given the earliest possible date (i.e. that same day) to make his representation.

In his representation Mr. Matos stated that Mr. Bainbridge had pulled him up because he was caught resting and rolling a cigarette.

30 Mr. Sene replied that this was not the case as it was a well known fact that workmen throughout the Department are allowed to stop work for a rest and have a smoke. The charge against Mr. Matos had been that he and another mason were put on a job estimated by a Clerk of Works to take about 3 hours to complete and after they had been one full working day on it, it had been reported by the Clerk of Works to Mr. Bainbridge that he was not satisfied with the progress made, and that the men were in their second day and the job was still not completed.

40 Mr. Bainbridge had inspected the site and had found Mr. Matos doing no work and rolling a cigarette. Mr. Bainbridge had, in the presence of his driver, told Mr. Matos that he did not consider the output of work satisfactory and that any contractor would have already finished the job much sooner. To this Mr. Matos had replied, "If you do not think the output good - I do". Mr. Bainbridge had then told Mr. Matos that he wanted to

Exhibits
Plaintiff's
Exhibit

A23.

Minute of
interview
given to
A. Matos.

10th October,
1960

- continued.

Exhibits
Plaintiff's
Exhibit

A23.

Minute of
interview
given to
A. Matos.

10th October,
1960

- continued.

see him in his office to which Mr. Matos replied, "you see me now". This constituted insolence to a superior officer and the Department could not take any other line but to warn Mr. Matos about it.

On the question of evidence as to what words were exchanged between Mr. Bainbridge and Mr. Matos, the Department had to accept Mr. Bainbridge's version, as an officer of integrity who had a witness as well. The Department regretted that it could not accept Mr. Mato's version, much less as he could not remember at this late stage, the exact words exchanged. 10

On the question of output, Mr. Matos stated that the estimation of the time the job would take had not been done, and that he was taking longer to do the job than he should have taken because he had to do labouring duties such as carting materials etc., as well as the mason's duties.

Mr. Sene stated that Mr. Matos could not know whether the job had been inspected or not because that is the Clerk of Works' duty and it is done prior to the commencement of the work. 20

Mr. Sene added that the job had been inspected and the necessary Form 1308 had been made up, which comprised estimated cost of materials and labour.

The Department had to accept the Clerk of Works' estimate as he was a fully technically qualified person, that the job should take 3 hours for two men.

As regards the question raised by Mr. Matos that he had to do labouring duties, the job should have been given to 1 Mason and 1 labourer but there being no labourers available on that occasion, two masons were put on the job. If Mr. Matos considered that he should not have done labouring duties, he should have represented this point before accepting the job. His acceptance of the job did not give him any excuse for poor output or being insolent to his superior officer. 30

The Department therefore had to accept that output was unsatisfactory as reported by both a Clerk of Works and a Garrison Works Officer, two fully technically qualified persons. 40

In summing up, Mr. Barr pointed out that it was a well known fact that the normal output expected by the Department was not unreasonable. Also that the warning was justified but that Mr. Matos should not

have to worry about it provided he did not commit himself again. To this, Mr. Sene added that in fairness to Mr. Matos he had been transferred away from the Division under Mr. Bainbridge's control, to his present Division under another Officer, so that at no stage could Mr. Matos or anybody else think that Mr. Matos was being watched or victimized.

10 Mr. Matos and friends accepted the Department's decision.

Signed: S.H. BARR
J.C. SENE.

Exhibits
Plaintiff's
Exhibit

A23.

Minute of
interview given
to A. Matos.

10th October,
1960

- continued.

DEFENDANTS' EXHIBIT

A13. - LETTER, MESSRS. TRIAY & TRIAY
TO THE COMMAND WORKS OFFICER

TRIAY & TRIAY.

P.O. Box 15,
28, Irish Town,
Gibraltar.

20 The Command Works Officer,
W.D. Works Organisation,
Headquarters:
Engineer House,
Engineer Lane,
Gibraltar.

Dear Sir,

We have been acting for Mr. Matos in connection with the charge of unlawful possession of a two foot ruler which came on for hearing on Thursday the 29th September, 1960.

30 As you are no doubt aware our client was acquitted of the charge. In view of the fact that he was suspended from duty, pending investigation and disposal of the matter, in accordance with paragraph 73 of Civilian Staffs Regulations 1950, and in view of his acquittal, we are now instructed by him to claim a refund of wages of which he has been deprived since the 15th September, 1960.

We would be much obliged for your kind attention to this application.

40 Yours faithfully,
(Sgd.) TRIAY & TRIAY.

Defendants'
Exhibit

A13.

Letter,
Messrs. Triay
& Triay to the
Command Works
Officer.

Undated.

<p><u>Exhibits</u> Defendants' Exhibit</p> <hr style="width: 10%; margin-left: 0;"/> <p>A14.</p> <p>Letter, J.C. Sene to Messrs. Triay & Triay.</p> <p>15th October, 1960.</p>	<p><u>A14. - LETTER, J.C. SENE TO MESSRS. TRIAY & TRIAY</u></p> <p>W.D. Works Organisation HQ. Engineer House, Engineer Lane, Gibraltar.</p> <p>15th October 1960</p> <p>Messrs. Triay & Triay, 28, Irish Town, Gibraltar.</p> <p>Dear Sirs,</p> <p>In reply to your letter undated, I am to in- form you that Mr. Matos has been requested to call at the Civilian Establishment and Pay Office to- morrow to collect the wages due for the period of suspension.</p> <p style="text-align: right;">Yours faithfully, J.C. SENE.</p> <p style="text-align: right;">For Command Works Officer.</p> <hr style="width: 20%; margin-left: auto; margin-right: auto;"/>	<p>10</p>
<p>Plaintiff's Exhibit</p> <hr style="width: 10%; margin-left: 0;"/> <p>A10.</p> <p>Letter, Messrs. Isola & Isola to the Editor Vox Newspaper.</p> <p>12th October, 1960.</p>	<p><u>A10. - LETTER, MESSRS. ISOLA & ISOLA TO THE EDITOR</u> <u>"VOX" NEWSPAPER</u></p> <p>ISOLA & ISOLA, Barristers-at-Law, 3, Bell Lane, Gibraltar.</p> <p>12th October 1960.</p> <p>The Editor, "Vox" Newspaper, 1, Fountain Ramp, Gibraltar.</p> <p>Dear Sir,</p> <p>We are instructed by Mr. Julius C. Sene of 32, Irish Town Gibraltar to refer to page 4 of the issue of "Vox" dated the 7th October, 1960 and to an article which is headed "en via-je "Turistico" Local". We are instructed to refer to the state- ments contained in the second last paragraph of the said article. These statements are grossly untrue and grossly defamatory of our client. Our client neither threatens workers as alleged nor suspends them without regard to natural principles of justice. Nor is our client a tyrant as implied in your article. Our client is a responsible</p>	<p>20</p> <p>30</p> <p>40</p>

officer in the administration of the War Department Works organisation. Our client is advised that the article in question is libellous and we are instructed to demand that you publish an unqualified apology and a denial that the facts stated in this article with regard to our client are true. We are further instructed to demand the payment of the sum of £500.0.0. by way of damages.

10 Should we not receive intimation within three days of the date hereof that you are agreeable to the above we shall have no alternative but to issue legal proceedings against you for libel.

Yours faithfully,
(Sgd.) ISOLA & ISOLA.

Exhibits
Plaintiff's
Exhibit

A10.

Letter,
Messrs. Isola
& Isola to the
Editor "Vox"
Newspaper.

12th October,
1960
- continued.

All. - LETTER, MESSRS. ISOLA & ISOLA TO "VOX"
PUBLICATIONS LIMITED

ISOLA & ISOLA,
Barristers-at-Law,
3, Bell Lane,
Gibraltar.

12th October, 1960

Messrs. "Vox" Publications Limited,
Publishers of "Vox" Newspaper,
1, Fountain Ramp,
Gibraltar.

Dear Sir,

30 We are instructed by Mr. Julius C. Sene of 32, Irish Town Gibraltar to refer to page 4 of the issue of "Vox" dated the 7th October 1960 and to an article which is headed "En viaje "Turistico" Local". We are instructed to refer to the statements contained in the second last paragraph of the said article. These statements are grossly untrue and grossly defamatory of our client. Our client neither threatens workers as alleged nor suspends them without regard to natural principles of justice. Nor is our client a tyrant as implied in your article. Our client is a responsible officer in the administration of the War Department Works organisation. Our client is advised that the article in question is libellous and we are
40 instructed to demand that you publish an unqualified

All.

Letter,
Messrs. Isola
& Isola to
"Vox" Publica-
tions Limited.

12th October,
1960.

Exhibits
Plaintiff's
Exhibit

All.

Letter,
Messrs. Isola
& Isola to "Vox"
Publications
Limited.

12th October,
1960
- continued.

apology and a denial that the facts stated in this article with regard to our client are true. We are further instructed to demand the payment of the sum of £500.0.0 by way of damages.

Should we not receive intimation within three days of the date hereof that you are agreeable to the above we shall have no alternative but to issue legal proceedings against you for libel.

Yours faithfully,
(Sgd.) ISOLA & ISOLA.

10

A12.

Letter,
Messrs. Isola &
Isola to
Simpres
Limited.

12th October,
1960.

A12. - LETTER, MESSRS. ISOLA & ISOLA TO SIMPRESS
LIMITED.

ISOLA & ISOLA,
Barristers-at-Law,
3, Bell Lane,
Gibraltar.
12th October, 1960

Messrs. Simpress Limited,
Printers of "Vox" Newspaper,
1, Fountain Ramp,
Gibraltar.

20

Dear Sir,

We are instructed by Mr. Julius C. Sene of 32, Irish Town Gibraltar to refer to page 4 of the issue of "Vox" dated the 7th October, 1960 and to an article which is headed "En viaje "Turistico" Local". We are instructed to refer to the statements contained in the second last paragraph of the said article. These statements are grossly untrue and grossly defamatory of our client. Our client neither threatens workers as alleged nor suspends them without regard to natural principles of justice. Nor is our client a tyrant as implied in your article. Our client is a responsible officer in the administration of the War Department Works Organisation. Our client is advised that the article in question is libellous and we are instructed to demand that you publish an unqualified apology and a denial that the facts stated in this article with regard to our client are true. We are further instructed to demand the payment of the sum of £500.0.0. by way of damages.

30

40

Should we not receive intimation within three days of the date hereof that you are agreeable to the above we shall have no alternative but to issue legal proceedings against you for libel.

Yours faithfully,
(Sgd.) ISOLA & ISOLA.

Exhibits
Plaintiff's
Exhibit

A12.

Letter, Messrs.
Isola & Isola
to Simpress
Limited.

12th October,
1960

- continued.

A15. - LETTER, MESSRS. TRIAY & TRIAY TO
MESSRS. ISOLA & ISOLA.

Defendants'
Exhibit.

TRIAY & TRIAY,

A15.

10

P.O. Box 15,
28, Irish Town,
Gibraltar.

Letter, Messrs.
Triay & Triay
to Messrs. Isola
& Isola.

22nd October, 1960.

22nd October,
1960.

Dear Sirs,

20

We have been instructed by Messrs. "Vox" Publications Limited Simpress Limited and the Editor of the Newspaper "VOX" to acknowledge receipt of your letters of the 12th October 1960 addressed to each of them in connection with the complaint by Mr. Julius C. Sene that statements contained in the second last paragraph of an article headed "EN VIAJE TURISTICO LOCAL" are grossly untrue and defamatory of him.

30

We first wish to point out that the article complained of was an article submitted by the Gibraltar Free Workers Union and not by any member of the Editorial Staff of the newspaper and that hence publication in Vox does not mean that our clients are necessarily in agreement with the terms thereof.

Our clients feel that it is important in Gibraltar to hold their columns open to every section of the community and have accepted this and other articles by the Gibraltar Free Workers Union and others pursuant to this policy.

However it would appear that it is the established practice within at least this particular

Exhibits
 Defendants'
 Exhibit

A15.

Letter, Messrs.
 Triay & Triay
 to Messrs.
 Isola & Isola.

22nd October,
 1960

- continued.

section of the War Department to write to workers threatening dismissal and even to suspend them on the strength of a mere report of misconduct of one kind and another by the foreman and this would appear to be done without first giving a hearing of any kind to the worker in question. Mr. Sene is the person upon whom the duty to sign these letters falls and whilst no doubt he considers that in the circumstances it is right and proper for him to act in the manner complained of by the article, it would appear that the statements of fact made in the article are nevertheless true. Our clients deny that they had implied that your client is a tyrant as in fact what they had done is to comment on the system whereby workers are threatened with dismissal or suspended without being given a hearing, comparing such a system to that which existed in bygone days under which it was not considered to be essential, having regard to the principles of natural justice, to give an accused person a hearing. These comments are surely fair of a matter which is undoubtedly of public interest which is the conditions of work of employees of the War Department who are a very substantial number in Gibraltar.

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20

Our clients have asked us to state categorically that they bear Mr. Sene no malice or illwill of any kind whatsoever, and that whilst they do not consider that he has been defamed nor was it their intention in the remotest way to do so, or to cause him any discomfort or embarrassment, having regard to the harsh manner in which it is attempted to enforce discipline within the War Department, they cannot, either in fairness to themselves or to the writers of the article complained of, agree to publish a statement that the facts stated in the article are untrue. They are however fully prepared to explain Mr. Sene's position in connection therewith in a statement in which it is made clear that no personal responsibility attaches to him and that the particular paragraph complained of is intended as appears clearly from the opening paragraphs, as a criticism of the War Department's dealings with its civilian staff as a whole and not a criticism of Mr. Sene personally.

30

40

We would be obliged if you will inform us whether your client would be willing to accept such an explanation on the lines we suggest so that the text thereof can then be prepared by us jointly with your goodselves.

50

Yours faithfully,
 (Sgd.) TRIAY & TRIAY.

A16. - LETTER, MESSRS. ISOLA & ISOLA TO
MESSRS. TRIAY & TRIAY AND FORM OF APOLOGY

ISOLA & ISOLA,
Barristers-at-Law,
3, Bell Lane,
Gibraltar.

2nd November, 1960

Messrs. Triay & Triay,
28, Irish Town,
Gibraltar.

10

Dear Sirs,

We are instructed to acknowledge receipt of your letter of the 22nd ult. and in reply to inform you that the offer contained in the fifth paragraph of your said letter is not acceptable to our client - for obvious reasons. The form of apology acceptable to our client is that contained in the enclosed sheet. Since it is clear from the attitude of your clients that they are not prepared to give such an apology we are on the instructions of our client issuing proceedings today for damages for libel against your clients.

20

We refrain from making any comments on the rest of your letter under reply as we feel no useful purpose is served thereby except perhaps to point out that whatever may be the policy of your clients' newspaper it is nevertheless very much their responsibility to ensure that no libellous matter gets into the paper.

30

Yours faithfully,
(Sgd.) ISOLA & ISOLA.

The Proprietors and Editor of "VOX" and the Proprietors of SIMPRESS LTD., hereby tender their unqualified apology to MR. JULIUS C. SENE, Officer i/c Administration of the War Department Works Organisation, Gibraltar, for the accusations published against Mr. Sene in an article headed "En Viaje Turistico Local" which appeared in the "VOX" of the 7th October 1960, signed by G.F.W.U.

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They further wish to make it public that the accusations in the article were false and irresponsible, and that they are satisfied, without any reservation whatsoever, that Mr. Sene has never acted in the manner implied in the article, either personally or in his official capacity.

Exhibits
Plaintiff's
Exhibit

A16.

Letter, Messrs.
Isola & Isola
to Messrs.
Triay & Triay,
and Form of
Apology.

2nd November,
1960

Exhibits
Plaintiff's
Exhibit

A17. - LETTER, MESSRS. TRIAY & TRIAY TO
MESSRS. ISOLA & ISOLA.

A17.
Letter, Messrs.
Triay & Triay
to Messrs.
Isola & Isola.
8th November,
1960.

TRIAY & TRIAY.
P.O. Box 15,
28, Irish Town,
Gibraltar.
8th November, 1960

Messrs. Isola & Isola,
3, Bell Lane,
Gibraltar.

Dear Sirs,

Julius C. Sene & Edward Campello
Vox Publications Limited and
Simpres Limited.
1960 S. No. 29.

10

We acknowledge receipt of your letter of the
2nd November 1960 from which we note that your
client is not disposed to accept the offer con-
tained in our letter of the 22nd October 1960 al-
though his reasons which you describe as "obvious"
would appear to us to be anything but clear. How-
ever, in view of the fact that writs have now been
issued we agree that no useful purpose is served
by further comments and we therefore limit our-
selves to notifying you that it is our intention
to apply to have these proceedings set aside for
non-compliance with Order 3 rule 9 of the Rules of
the Supreme Court.

20

Yours faithfully,
(Sgd.) TRIAY & TRIAY

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A24.
Terms of
engagement
for War
Department
Civilian
Employees.

A24. - TERMS OF ENGAGEMENT FOR WAR DEPARTMENT
CIVILIAN EMPLOYEES

Civilian Establishment & Pay Office,
Fortress Headquarters,
Gibraltar.

TERMS OF ENGAGEMENT

Para.50.

LOSS OF OR DAMAGE TO PUBLIC PROPERTY.

(a) If it is decided after investigation that an
employee is responsible, either wilfully or
by neglect or by breach of orders, for the
loss of or damage to public property, he may

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be called upon to make good the loss or damage or part of it, if necessary by stoppage of pay. In addition, disciplinary action may be taken against him. In the case of his dismissal any money due to him from the Department may be withheld to meet the claim.

Exhibits
Plaintiff's
Exhibit

A24.

10 (b) The head of the establishment will ensure that any representations which the employee may wish to make are heard, and that for this purpose the employee is given an opportunity of obtaining the assistance of the Trade Union or Staff Association representative, who will be allowed to question any witnesses. When an employee is called upon to make good from his pay part or all of the loss or damage, the head of the establishment will give him a statement in writing of the amount of the deduction and particulars of the acts or omissions in respect of which the deduction is made. If the decision is to deduct from the employee's pay in instalments, a statement on the above lines will be given to the employee on each occasion that a deduction from pay is made.

20

Terms of engagement for War Department Civilian Employees - continued.

Para. 116.

STOPPAGE OF MONEY DUE

30 Any money due to an employee may be withheld to meet any disallowance (including any issue made through an error as to the facts) due by him, or for any damage or loss of public property that the competent authority after investigation may decide to be chargeable against him.

I understand that I shall be serving under the conditions of Civilian Staff Regulations, which are generally applicable to all grades of Civilian employees in War Department out station establishments.

Signed _____

Witness _____

ExhibitsPlaintiff's
Exhibit

2.

Translation
of Article
in Vox
Newspaper.
7th October,
1960.2. - TRANSLATION OF ARTICLE IN VOX NEWSPAPERCorrespondence.

The editor of the weekly newspaper VOX.

We would be grateful if you would publish the following Article:

ON A LOCAL "TOURIST" TRIP.

Under this title and with the already characteristic kindness which the management of this popular weekly newspaper is extending to us, we propose, starting as from this first article, to initiate a campaign of moral improvement wherein we shall call things by their proper names and face the responsibility which we may bring upon ourselves through our articles.

10

We invite public opinion in Gibraltar to follow our articles closely as we wish to announce in advance that our readers will get to hear of all the officious gearing of the various War Departments.

Let us explain. - In our local "tourist" trip we shall deal in strict turn with the places we meet on our way concerning the whole of the urban part of the town. With the courage known to the readers who assiduously follow our articles with sympathy, we shall tear into bits, point by point, all the deficiencies, all the mysteries, and all the sharp practices of local politics. For that reason, our tourist trip may sometimes come across the small official and in his place in the following number we may do it like that great Don Quixote of the genial Cervantes with his Sancho Panza. That is to say, with our lance in socket we will launch our attacks against opposite factions and attack all such injustices as we may come across in our path. There will be no puppet left with a head on and when in our trip we come across that fine building called the Colonial Secretariat, it will be just the same to us as when we come across the great Palace of our "Governor". It is for this reason that we invite the people to follow us in this rugged road of the mission we impose upon ourselves at a time when everything seems to crumble down in a moment when the social outlook does not trouble the official employers in the least, precisely owing to the apathy and little courage of the workers' organisations.

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We repeat that our great interest is to point out the endless number of anomalies existing in official evolution where influence is complementary and where no wolf bites another wolf.

Exhibits
Plaintiff's
Exhibit

2.

Translation
of Article
in Vox
Newspaper.
7th October,
1960
- continued.

10 Making our object clear and in the hope that the people will follow and support us, we begin our "tourist" campaign starting from Windmill Hill where the War Department called R.E. Viney Quarry is situate which employs approximately 300 workers. From there we will proceed towards the Departments we may meet on our way. It is an undeniable fact that in Gibraltar there exists a Factories Ordinance. We venture to assert that this only exists in appearance, that is to say, that it is conspicuous for its absence in the places of work, and if by chance it makes any manifestation of existence it is at paytime when many wages have to be justified in respect of cushy jobs.

20 The inclemence of the weather at this time is beginning to increase and the effects of a crude winter already appear in the distance bringing havoc as ever to the working class. In that Department, on pay day, workers have to receive their weekly wages lined up in a queue in the open air and under the drenching rain and in the majority of cases the money serves to pay for the hundreds of catarrhs caught by the workers. It is the sad case, and this happens nearly every time the workers are working in the low area of Europa, that
30 they have to walk up to Windmill Hill soaked in rain whilst the paymaster waits under a roof without hardly knowing that it is raining torrentially.

We started by saying that we would not stop our pen before anything or anybody and for this reason we quote today Mr. Cooper, General Foreman of this Department, who has in his hands the solution of this problem by authorising the workers who are working in the low part of Europa to receive their wages at CEPO as he has been previously asked to do without his having taken any notice.
40 A little more humanity Mr. Cooper and solve this matter. These are not the only anomalies existing in that R.E. Viney Quarry Department.

There are more. Mr. Sene, Chief Clerk, threatens workmen and even suspends them simply on any report from the charge-men without bothering to make enquiries as if we still lived in the days of Torquemada and Nero. No sirs, no, the voice

Exhibits
Plaintiff's
Exhibit

2.

Translation
of Article
in Vox
Newspaper.
7th October,
1960
- continued.

of the workers must be heard and respected because work is a temple of virtue and seriousness, let the service under the Factory Ordinance know and clearly understand this because perhaps they do not even know where this Department is situate.

There are only two water closets available and we do not think they are in a good hygienic condition for nearly 300 workers which means a regular saving. Workers have neither lockers to keep their out of work clothes or anything like it. The Delegates of the G.C.L. are informed of these deficiencies but take no notice of this because the greatest incompatibility existing in the Department is that these workers who are Delegates at the same time are also chargemen by reason of which they cannot stab themselves with their own daggers. There is nothing adequate to preserve them from so much misfortune, not even some heating in the forthcoming winter days. Carpenters are paid the expenses of their tools but masons are not. Anyhow, this is chaotic and requires immediate remedy and if it is not done with the least possible delay we shall be compelled to denounce it again pointing out those who are responsible to public vengeance.

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G.F.W.U.

IN THE PRIVY COUNCIL

Appeal No. 33 of 1962

O N A P P E A L

FROM THE SUPREME COURT OF GIBRALTAR

B E T W E E N

EDWARD CAMPELLO SIMPRESS LIMITED
and VOX PUBLICATIONS LIMITED
(Defendants)

Appellants

- and -

JULIUS C. SENE (Plaintiff)

Respondent

R E C O R D O F P R O C E E D I N G S

STONES, MORRIS & STONE,
2, Wardrobe Place,
Doctors' Commons,
London, E.C.4.

Solicitors for the Appellants

WILLIAM A. CRUMP & SON,
2/3, Crosby Square,
Bishopsgate,
London, E.C.3.

Solicitors for the Respondent