Privy Council Appeal No. 31 of 1985

Reginald Austin *Appellant*

v.

Mirror Newspapers Limited *Respondents*

FROM

THE SUPREME COURT OF NEW SOUTH WALES COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 4TH NOVEMBER 1985

Present at the Hearing:

LORD CHANCELLOR (LORD HAILSHAM OF ST. MARYLEBONE)
LORD KEITH OF KINKEL
LORD ROSKILL
LORD GRIFFITHS

*[Delivered by **Lord Griffiths**]*

The appellant, Mr. Reginald Austin, appeals from a judgment of the Court of Appeal of The Supreme Court of New South Wales given on 23rd August 1984. By that judgment the Court of Appeal dismissed the appellant's appeal from the judgment of Mr. Justice Lusher who had held that the appellant's action for defamation against the respondents, Mirror Newspapers Limited, was defeated by the statutory defence of qualified privilege based upon section 22 of the Defamation Act 1974.

The appellant's claim arose out of an article that appeared in the Daily Mirror Newspaper on 27th April 1981. The appellant was the trainer of a professional rugby league club. The Daily Mirror is a daily newspaper with a circulation of approximately 353,000 copies. The author of the article, with the exception of headlines inserted by a sub-editor, was Mr. Ronald Arthur Casey, a journalist employed by the respondents who contributed a regular column to the newspaper known as "Casey's Corner". The text of the article was as follows:-

"COACHES PUSHING TOO HARD

[38] It hasn't been a good year for the big names of rugby league. In fact it has been something of a

minor catastrophe the way Parramatta and Manly, along with Balmain, have flopped so badly.

North Sydney's three-try spree to snatch a win over Parramatta and Newtown's steamrollering of Manly emphasises that something is radically wrong with the preparation of major teams with undeniably talented players.

It's easy to blame Ray Ritchie and Jack Gibson or even Frank Stanton, but that would blame only those coaches while perhaps others will suffer the same fate later in the season.

I believe Sydney's top teams are being trained into the ground by over-zealous conditioners who have somehow hoodwinked coaches into believing that on top of a gruelling 80-minute match three nights of tortuous conditioning are also needed.

This means, in effect, Sydney footballers are pressing their bodies to the limit four nights a week.

While that might be acceptable in the boudoir, it is a short cut to physical staleness on the football field.

I've always believed once a man becomes an international he doesn't need to be guided all the time with his preparation for matches.

FAULT

Manly has persisted for the past three years with the physical regimentation of its players by a fitness fanatic named Reg Austin.

From the little I know of Reg he is a magnificent man, and his persecution of his own body has made him the fastest runner in the world for his advanced age.

But since Austin has taken over the conditioning of Manly the records show it has gone from being a great side to being a tattered band of former champions.

Now this has not altogether been Austin's fault.

A certain lack of concentration and over-confidence on the part of players has contributed as much as some unimaginative coaching from Frank Stanton, Allan Thomson and Ray Ritchie.

I question the wisdom of Austin when he tells an international footballer to do another six 400m sprints as some kind of penance.

League stars train very hard before the season starts.

But once they start playing - sometimes once and twice a week - is there a need for such a grinding training program under these whip-driving coaches?

The problem is Reg Austin and company think they are doing the right thing. My advice is to sack them."

The appellant complained that the article carried the following defamatory imputations:-

(1) that the plaintiff directed physical conditioning and preparation of the Manly Rugby League team in such a wrong and incompetent manner that he was unfit to hold the position of trainer.

(2) that the plaintiff was an incompetent conditioner of the Manly Rugby League team.

The respondents relied upon a variety of defences. They denied that the article carried the imputations alleged by the appellant or that such imputations were defamatory. They relied upon the truth of a contextual imputation pursuant to section 16 of the Act. They relied upon the defence of comment pursuant to the provisions of Division 7 of the Act and finally they relied upon the defence of qualified privilege pursuant to the provisions of Division 4 of the Act.

At the end of a five-day trial, by their answers to the questions left to them by the judge, the jury rejected each of these defences with the exception of qualifed privilege which by section 23 of the Act is reserved to the judge. The jury assessed damages in the sum of $60,000. The questions left to the jury and their answers were as follows:-

"1. Has the plaintiff proved that the matter complained of conveyed the imputations (or any imputations not substantially different from)

(a) The plaintiff directed physical conditioning and preparation of the Manly Rugby Team in such a wrong and incompetent manner that he was unfit to hold the position of trainer.

Yes.

(b) The plaintiff was an incompetent conditioner of the Manly Rugby League Team.

Yes.

NOTE:

If the answer to (a) or (b) or both is "Yes" and only then proceed to Question 2.

2. (a) Was imputation 1(a) defamatory of the plaintiff?

Yes.

(b) Was imputation 1(b) defamatory of the plaintiff?

Yes.

NOTE:

If the answer to 2(a) and/or 2(b) or both is "Yes" and only then proceed to answer question 3.

3. Has the defendant satisfied you that the matter complained of conveyed the imputation (or any imputation not substantially different from)

"That the plaintiff directed physical conditioning and preparation of the Manly Rugby League Team in a wrong or incompetent manner."

Yes.

NOTE:

If the answer to question 3 is "Yes", proceed to question 4. If the answer to question 3 is "No" proceed to question 6.

4. Has the defendant satisfied you that the imputation in question 3 is substantially true?

No.

NOTE:

If you answer this question "Yes" proceed to question 5.

5. Has the defendant satisfied you that the plaintiff's reputation was not further injured by:

- imputation 1(a) if you have found it to be defamatory in question 2 and/or

- imputation 1(b) if you have found it to be defamatory in question 2 by reason of the imputation found to be true in question 4?

Not answered.

6. Has the defendant satisfied you that the circumstances of the publication of the matter complained of were such that the plaintiff defamed was not likely to suffer harm?

No.

7. Has the defendant satisfied you that any comment was based upon proper material for such comment and was the comment of a servant or agent of the defendant?

No.

8. If you find none of the defences established what damages do you find?

$60,000."

After the jury had returned their verdict the judge received submissions on the defence of qualified privilege and determined that issue in favour of the respondents.

Section 23 of the Act provides:-

"**Qualified privilege a question for the court.**

23. Where proceedings for defamation are tried before a jury and, on the facts, there is a question whether there is a defence of qualified privilege under this Division, that question is to be determined by the court and not by the jury."

Mr. Justice Lusher concluded that when considering the defence of qualified privilege it was his duty as the judge to find the facts without regard to any findings of the jury. He held that the article consisted largely of comment and that it was based upon facts that were substantially true: this inevitably brought the judge into conflict with the view of the jury who by their answers to questions 4 and 7 had clearly found that in so far as the article consisted of fact it was not substantially true.

The Court of Appeal held that in discharging his function under section 23 the judge was bound by the factual findings of the jury and as he had ignored and indeed contradicted them they were bound to treat his reasoning as erroneous and to set his judgment aside. Neither party to this appeal has challenged this finding nor would there appear to be any grounds for doing so.

However neither party wished to incur the expense of a further trial of this issue and they therefore invited the Court of Appeal to decide whether the defence had been established paying due regard to the jury's findings but deciding all other primary facts for itself.

Section 20 (1)(c) provides:-

"**Multiple publication.**

20(1) For the purposes of this section -

(c) an occasion is one of qualified privilege if, but only if -

(i) it is an occasion of qualified privilege under the law apart from this Act; or

(ii) the circumstances of the publication afford a defence of qualified privilege under section 21 or section 22."

This appeal is concerned only with the defence of qualified privilege provided by section 22.

The essential ingredients of the defence of qualified privilege under this section are set out in sub-section 22(1):-

"Information.

22.(1) Where, in respect of matter published to any person -

(a) the recipient has an interest or apparent interest in having information on some subject;

(b) the matter is published to the recipient in the course of giving to him information on that subject; and

(c) the conduct of the publisher in publishing that matter is reasonable in the circumstances,

there is a defence of qualified privilege for that publication."

It is submitted on behalf of the appellant that the respondents failed to establish the necessary ingredients of the defence under each of sub-paragraphs (a), (b) and (c).

As to sub-paragraph (a) it was submitted on behalf of the appellant that the readers of the newspaper did not have "an interest" in having information on the subject matter of the article, which it was agreed between the parties, could be taken to be the performance of teams in the rugby league competition and the alleged training methods of conditioners. It is possible as a matter of construction to place a narrow or a broad construction on the words "an interest". The narrow construction would equate "an interest" with that type of interest which is usually looked for as an ingredient of the defence of qualified privilege at common law, that is to say, an interest material to the affairs of the recipient of the information such as would for instance assist in the making of an important decision or the determining of a particular course of action. It is for this narrow construction that the appellant contends. But it is clear that the courts in New South Wales have placed a broader construction upon the words "an interest" and have taken them to include any matter of genuine interest to the

readership of the newspaper. In *Wright v. Australian Broadcasting Commission* [1977] 1 N.S.W.L.R. 697 Reynolds J.A., with whom Glass J.A. agreed, said at page 711, when considering section 22(1)(a) in respect of a television broadcast, "it cannot be denied that the recipient, in this case the general public, had an interest in having information on the subject of public affairs". In *Morosi v. Mirror Newspapers Ltd* [1977] 2 N.S.W.L.R. 749 the Court of Appeal drew a contrast between the interest required to find qualified privilege at common law with the wider interest referred to in section 22. They said at page 797:-

> "The limited application of the common law principles of qualified privilege to publications in newspapers has already been discussed. Section 22 was designed to enlarge the protection afforded by these principles to defamatory publications generally, and it has a particular relevance to publications in newspapers; but it gives no *carte blanche* to newspapers to publish defamatory matter because the public has an interest in receiving information on the relevant subject. What the section does is to substitute reasonableness in the circumstances for the duty or interest which the common law principles of privilege require to be established."

In *Barbaro v. Amalgamated Television Services Pty. Ltd* (1985) 1 N.S.W.L.R. 30 Hunt J. said at page 40:-

> "The word 'interest' is not used in any technical sense; it is used in the broadest popular sense, to connote that the interest in knowing a particular fact is not simply a matter of curiosity, but a matter of substance apart from its mere quality as news."

In *Field v. John Fairfax & Sons Limited*, (Court of Appeal 23rd May 1974, unreported), it was held that the public had an interest in the greyhound racing industry.

Bearing in mind that this Act was clearly intended to widen the scope of the common law defence of qualified privilege, their Lordships see no reason to differ from the wider construction adopted by the courts in New South Wales and, applying this construction, accept the view of both the trial judge and the Court of Appeal that the readership of this daily newspaper had an interest in the performance and training of the Manly Rugby football club within the meaning of section 22(1)(a).

The next submission on behalf of the appellant was that the article was not conveying "information" within the meaning of section 22(1)(a) and (b). It was said that information should be restricted to

facts contained in news or reportage as distinct from comment or opinion. It is difficult to see any reason why the word information should be given such an artifically restricted meaning. The word itself in its ordinary meaning is apt to cover both fact and opinion and there are as many matters of opinion that will be of general interest to the readership of a newspaper as there are facts upon which such opinions are based. It is implicit in the decisions of the Court of Appeal in *Wright v. Australian Broadcasting Commission* [1977] 1 N.S.W.L.R. 697 and *Morosi v. Mirror Newspapers Limited* [1977] 2 N.S.W.L.R. 749 that the Court of Appeal in New South Wales considered that information would, where appropriate, cover comment and opinion. Their Lordships agree with this view and accept that so much of the article as comprised comment was information within the meaning of section 22(1)(a) and (b) and was published in the course of giving information on the subject in which the readership had an interest, namely the performance and training of professional rugby league teams.

It now remains to be considered whether the Court of Appeal were right to conclude that the conduct of the newspaper in publishing the article was reasonable in the circumstances within the meaning of section 22(1)(c). In considering whether the conduct of the publisher is reasonable the Court must consider all the circumstances leading up to and surrounding the publication. These circumstances will vary infinitely from case to case and it would be impossible and most unwise to attempt any comprehensive definition of what they may be. But where a jury has rejected a defence of fair comment upon the ground that the facts upon which the comment is based are not substantially true the starting point of the inquiry must be the ascertainment of those facts which the jury have found to be untrue. A newspaper with a wide circulation that publishes defamatory comments on untrue facts will in the ordinary course of events have no light task to satisfy a judge that it was reasonable to do so. Those in public life must have broad backs and be prepared to accept harsh criticism but they are at least entitled to expect that care should be taken to check that the facts upon which such criticism is based are true.

The difficulty facing both the trial judge and the Court of Appeal was that it was not possible to tell from the jury's answer to question 7 precisely which parts of the article they considered to be fact and which they considered comment. With hindsight it would obviously have been better if the jury had been asked to state which parts of the article they found to be facts and which facts they found were not true. The Court of Appeal set out eight matters which they

assumed were found by the jury to be untrue allegations of fact. They considered four of these allegations to be relevant to the defamatory imputations:

1. That there was something wrong with the team's preparation.
2. That the players were subjected to three nights of "tortuous" (sic) training.
3. That bodies were pressed to the limit four nights a week.
4. That international players were given extra sprints as a penance.

It was not argued that it was not open to place this interpretation upon the jury's finding. The thrust of the factual content of the article was that the appellant was training the team into the ground, that is training them to the point of exhaustion three times a week. This meaning emerges clearly enough from the four relevant facts which the Court of Appeal concluded were found to be untrue by the jury.

If in fact it was true that the appellant was pursuing such fanatical training methods three times a week, it is easy to understand his conduct attracting the criticism of his methods contained in the article, even to the point of suggesting that he should be sacked as the trainer. On the other hand the mere fact that there were three training sessions a week in order to play one game at the weekend would seem to provide no basis for such an attack. It is not the fact of training which is obviously necessary to play so physically demanding a game as professional rugby, it is the method of training that is attacked in the article.

As Mr. Casey admitted in evidence, this was a hard-hitting article: it denigrated the appellant's training methods. If the newspaper decides to launch such an attack by publishing the article they know that they will only be protected by the defence of comment if their journalist has got his facts right. If the defence of comment fails, because the facts are untrue, and it emerges that neither the journalist nor anyone else made any proper enquiry to ascertain the true facts, this is a consideration that must loom large in an evaluation of the reasonableness of the publisher's conduct in publishing the article.

In evaluating reasonableness the Court of Appeal would not appear to have directed their minds to what if any attempts were made to find out or check upon the training methods used by the appellant. The matters upon which the Court of Appeal relied as showing that the publication was reasonable are set

out in the following passage from the judgment of Glass J.A.:-

> " For the defendant reliance is placed on the following matters of fact which the trial judge found to be proved. Part of the information on which the article was based had been obtained by the writer from an article published in another newspaper the day before. It quoted the plaintiff as saying in relation to his players 'I gave them six 400 metre runs just to round off the session'. The plaintiff agreed in evidence he had used those words in speaking to the writer of the earlier article. The plaintiff was a man in the public eye who had by making such a statement to the reporter voluntarily placed his training techniques into the public domain as a matter for discussion. The author of the article sued upon had an honest belief in the substantial truth of the allegations of fact in it and the fairness of the comment he had made. He was an experienced writer in whom the publisher could repose some confidence. The trial judge who saw and heard the witnesses was well placed to make these findings and I accept them.
>
> As I have previously observed, the defence in question, if established, gives rise to an occasion of qualified privilege ranking equally with an occasion of privilege at common law (s.20(1)(c)). A privileged occasion at common law affords a complete answer to defamatory imputations which, being allegations of fact, could not be justified as true and, being comment, could not be defended as fair. The statutory defence, if made out, confers no less protection. I bear this in mind when I consider whether the elements of s. 22 have been made out so as to constitute a complete answer to what would otherwise be untrue statement of fact or unfair comment which defames the plaintiff. Having given full consideration to the primary facts established by the jury verdict and to the primary facts established to my satisfaction I am of the opinion that the conduct of the defendant in publishing the matter defamatory of the plaintiff was in all the circumstances reasonable and that the defence is made out."

Upon this passage their Lordships would make the following comments. In so far as Mr. Casey drew the facts from Miss Goodwin's article published in another newspaper he substantially mis-quoted them. Miss Goodwin's article quoted the appellant as saying "Let's face it, all footballers hate training. And I gave them six 400 metre runs just to round off the session. That they wanted to fight me suggested they still had enough breath left for another couple of

laps which shut them up". This appeared in Mr. Casey's article as "I question the wisdom of Austin when he tells an international footballer to do another six 400 metres sprints as some kind of penance". This short quote from Mr. Austin in Miss Goodwin's article would hardly seem a sufficient basis on which to assert that the appellant's method was to train the team into the ground three nights a week.

The fact that Mr. Casey had an honest belief in the substantial truth of the allegations of fact in the article and the comment he made is of course a relevant matter in considering the question of reasonableness: their Lordships do not, however, accept the appellant's submission that, because the respondents in answer to an interrogatory said that they did not intend to convey the imputations pleaded in the statement of claim, it necessarily follows that they, or the writer of the article, could not have held such a belief. The interrogatory and answer were as follows:-

> "Did the defendant, its servants or agents intend by the publication of the matter complained of to convey the imputations pleaded in the further amended statement of claim?
>
> a. As to the first imputation, no.
>
> b. As to the second imputation, no, although it was intended to convey the imputation that the plaintiff directed physical conditioning and preparation of the Manly Rugby League Team in a wrong or incompetent manner."

The object of the interrogatory was to attack the defence of comment. Section 33 of the Act provides:-

> "**Comment of servant or agent of defendant.**
>
> 33.(1) Subject to sections 30 and 31, it is a defence as to comment that the comment is the comment of a servant or agent of the defendant.
>
> (2) A defence under sub-section (1) as to any comment is defeated if, but only if, it is shown that, at the time when the comment was made, any person whose comment it is, being a servant or agent of the defendant, did not have the opinion represented by the comment."

By answering the interrogatory as they did the respondents provided *prima facie* evidence that could be used to show that their servant or agent, Mr. Casey, did not hold the opinion represented by the comment i.e. the imputations which the jury found to be established in so far as they were comment. See *Bickel v. John Fairfax & Sons Ltd and Another* [1981] 2 N.S.W.L.R. 474.

Although the answer to the interrogatory is evidence that can be used in an attempt to defeat a defence of comment it does not follow that it will necessarily defeat the defence of statutory qualified privilege. Words are often capable of more than one meaning, and because the jury may attach to them a defamatory meaning which the writer did not intend, it does not follow that the writer did not honestly believe in the truth of what he wrote and reasonably intended a different meaning to be given to his language. In this case Mr. Casey gave evidence and said that he did honestly believe in the truth of what he wrote. The trial judge believed him and the answer to the interrogatory is a wholly insufficient basis to undermine the opinion of the trial judge which the Court of Appeal were free to accept.

No doubt the finding that Mr. Casey was an experienced writer in whom the publisher could repose some confidence can also be said to be a relevant circumstance bearing upon reasonableness but it would seem to their Lordships to be a matter of little weight in the circumstances of this case. The only witness called upon on behalf of the respondents was Mr. Casey. Apart from headlines inserted by a sub-editor, which had no impact on the emphasis of the article, there was no evidence that it was critically considered by any other member of the staff of the newspaper. It was Mr. Casey that the newspaper entrusted to write this article and none other. In these circumstances they relied upon their journalist Mr. Casey to get his facts right.

A publisher that is a limited company can only discharge the duty to act reasonably through its servants or agents and in the present case it seems clear that the company were relying upon Mr. Casey to produce an article that it was reasonable for them to publish. If in these circumstances it is found that the journalist not only got his facts wrong but had also failed to take reasonable care to ascertain them the publishers of the newspaper must stand in the shoes of their journalist for the purposes of considering whether their conduct in publishing the article was reasonable. The newspaper, the publisher, cannot be allowed to hide behind their journalist on the ground that it never occurred to them that their journalist would be so careless. The newspaper must stand or fall by the conduct of its own journalists. Very different considerations will of course apply to the publication of an article by an independent contributor who cannot be considered as either the servant or agent of the newspaper. An independent contributor is in no sense the alter ego of a newspaper for the purpose of producing the article and in such circumstances his reliability and reputation will be a very important matter in considering whether the conduct of the publisher was

reasonable in accepting and publishing the article if it turns out to be defamatory and untrue.

This then brings their Lordships to what they consider to be the crucial issue in this appeal. Was it in all the circumstances reasonable for Mr. Casey to write, and thus cause his employers to publish, an article which contained a wholly untrue description of the appellant's training methods and on this basis to comment in such hostile terms?

The jury found that the article meant that the appellant trained the Manly Rugby League Team in such a wrong and incompetent manner that he was unfit to hold the position of a trainer. As the article ended with Mr. Casey's advice that Mr. Austin should be sacked, the jury hardly came to a surprising conclusion. This was a libel that affected the appellant in the exercise of his professional duties which were much in the public eye and the opinion expressed was very hostile to the appellant's professional competence. When a journalist wishes to make such a trenchant and potentially damaging attack it is in the interests of society that he should be expected to take all reasonable steps to ensure that he has got his facts right. The media has enormous power both for good and ill and it would be a sorry day if newspapers were encouraged to believe that under the shield of qualified privilege the reputations of individuals could be attacked by slip-shod journalism that would provide no defence of comment because the facts on which the attack was based were not true. Where the defence of comment has failed because the jury has found the facts to be untrue, a judge should examine the circumstances leading up to the publication of those false facts very closely before concluding that it was reasonable to publish them.

As a general rule their Lordships will be loathe to interfere with a decision on the question of reasonableness under section 22(1)(c). The evaluation of all the local circumstances is a matter which the judges in New South Wales are much better fitted to undertake than this Board and this point was rightly much pressed upon their Lordships by counsel for the respondents.

Counsel further submitted that this was a case in which the Board was faced with concurrent findings of fact with which, in accordance with its practice, this Board would not interfere. Their Lordships cannot accept this submission. This is not a case in which the Board faces concurrent findings of fact; it is true that both the trial judge and the Court of Appeal held that the publisher's conduct was reasonable but as has already been demonstrated they proceeded to that conclusion not upon concurrent but upon entirely different findings of fact.

Despite their reluctance to interfere on the finding of reasonableness their Lordships feel impelled to do so in this case because it appears to them that the Court of Appeal never considered the most material part of the circumstances in this case, namely how it came about that Mr. Casey came to write a factually untrue account of the appellant's training methods. The harder hitting the comment the greater should be the care to establish the truth of the facts upon which it is based. Where did Mr. Casey get his facts from? His primary source of information appears to have been the article written by Miss Goodwin from which, as has already been observed, he mis-quoted; his only other current source of information appears to have been an inference of over-training that he drew from watching on a video the five matches that Manly had played that season which led him to conclude that the players were stale as a result of over-training. If he had gained this impression of the training methods there would have been no difficulty in verifying it: he could have spoken to Mr. Austin about it, he could have interviewed the players, he could have asked permission to attend a training session to see it for himself. He did none of these things, but the day after Miss Goodwin's article appeared he wrote this virulent attack on the appellant upon what turned out to be a completely false basis.

Their Lordships have been driven to the conclusion that even if Mr. Casey had formed the impression of over-training as a result of reading Miss Goodwin's article and his own observations of the matches it was wholly unreasonable to write an article describing the training methods in such highly charged and colourful language containing such descriptions of the training as "being trained into the ground" - "three nights of tortuous conditioning" - "Sydney footballers are pressing their bodies to the limit four nights a week" - "tells an international footballer to do another six 400 metres sprints as some kind of penance" - "is there a need for such a grinding training program under these whip-driving coaches", without checking upon the accuracy of his impression of the training methods. If Mr. Casey had checked his impression of Austin's training methods, as he so easily could have done, he would have realised that he got the wrong impression and as a responsible journalist would never have written as he did.

There will of course be cases in which despite all reasonable care the journalist gets the facts wrong, but a member of the public is at least entitled to expect that a journalist will take reasonable care to get his facts right before he launches an attack upon him in a daily newspaper. If on inquiry it is found that the facts are not true and that reasonable care

has not been taken to establish them courts should be very slow to hold that the newspaper is protected by statutory qualified privilege. The public deserve to be protected against irresponsible journalism. The defence of comment provides such protection by insisting upon the newspaper establishing the substantial truth of the facts upon which it comments. It cannot surely have been the intention of the legislature that this protection should be substantially stripped away by the introduction of the statutory defence of qualified privilege. But this will be the result if a newspaper is able to hide behind the actions of a careless or a irresponsible journalist or if the Court takes too indulgent a view of the conduct of a journalist who failed to check his facts.

Their Lordships therefore conclude that Mr. Casey did not take reasonable care to check the facts before he wrote this article, and that the publishers must bear the responsibility for this failure. The respondents therefore failed to discharge the onus upon them under section 22(1)(c) to establish that their conduct in publishing the article was reasonable in the circumstances. Their Lordships therefore hold that the defence of qualified privilege fails.

In these circumstances their Lordships will humbly advise Her Majesty that this appeal ought to be allowed, and the judgments of the Supreme Court and the Court of Appeal set aside and that judgment should be entered for the appellant in the sum of $60,000. The respondents must pay the appellant's costs before the Board and in the courts below.