

Privy Council Appeal No. 47 of 1988

**Joseph Nathaniel France and
Fitzroy Bryant**

Appellants

v.

Kennedy Alphonse Simmonds

Respondent

FROM

THE COURT OF APPEAL OF THE EASTERN
CARIBBEAN SUPREME COURT
(ST. CHRISTOPHER AND NEVIS)

ORAL JUDGMENT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE
20TH FEBRUARY 1990

Present at the hearing:-

LORD KEITH OF KINKEL
LORD BRANDON OF OAKBROOK
LORD TEMPLEMAN
LORD GOFF OF CHIEVELEY
LORD LOWRY

[Delivered by Lord Keith of Kinkel]

This appeal from the Court of Appeal of the Eastern Caribbean Supreme Court arises out of proceedings for libel instituted by the respondent, the Prime Minister of the Federation of Saint Christopher and Nevis, against the defendant appellants, the editor of a journal called "The Labour Spokesman" and one of the journalists who regularly published articles in that journal.

The article which led to the proceedings was published in "The Labour Spokesman" on 23rd May 1981 and was written by the second defendant whose name appeared at the head of it. The article was concerned with certain transactions which had taken place in connection with the disposal of a ferry boat, which formerly plied between Saint Christopher and Nevis and which had been damaged by a hurricane, and the acquisition of a new vessel for the purpose of undertaking the ferry service. The article on the face of it appeared to be stating that the Prime Minister had been guilty of corruption in relation to the transactions involving these two vessels.

When the matter came to trial before Mr. Justice Singh, he had to consider first whether the article was capable of a defamatory meaning and secondly whether the article was in fact defamatory. He took the view that the article was indeed capable of a defamatory meaning and their Lordships consider that he was entirely correct in that conclusion. He went on to find that the article was defamatory of the respondent and his finding of fact in that respect was affirmed by the Court of Appeal. There are thus concurrent findings of fact and there are not present any of the circumstances which might warrant this Board in interfering with those concurrent findings. The defendants pleaded fair comment and qualified privilege but the trial judge found that at least the second defendant had been actuated by malice in the making of the publication. The Court of Appeal affirmed that finding, so here again there are concurrent finding of fact and no grounds upon which their Lordships would consider interfering with those findings. In these circumstances there is no doubt that the findings of liability affirmed by the Court of Appeal must stand.

Then it was argued that the damages awarded in the sum of \$75,000 were excessive but their Lordships can find no good grounds for interfering with the decision of the Court of Appeal who affirmed the judge on the quantum of damages, considering that the Court of Appeal are fully familiar with economic and other relevant circumstances in Saint Christopher and Nevis and their Lordships do not enjoy a similar advantage.

A point was sought to be made under section 12 of the Constitution of Saint Christopher and Nevis but their Lordships do not consider that that provision adds anything to the requirements of the common law as regards the circumstances under which defamation may be found and which may inhibit freedom of speech.

Finally, it was argued that the finding of malice against the second defendant should not be attributed to the first defendant. However, in fact, the judge found that the first defendant also was actuated by malice in respect that the publication complained of was part of a malicious campaign directed against the respondent to which the first defendant as well as the second defendant was party.

For these reasons their Lordships will humbly advise Her Majesty that this appeal should be dismissed. The appellants must pay the respondent's costs.