to an intermediate place of delivery. That being so, according to the true construction of this bill of lading, I am of opinion that the moment the ship-owner has cleared the goods from the deck, he ceases to be responsible in any way for them; and that, whatever remedy the plaintiffs may have against the dock company, or anyone else, they cannot under the circumstances charge the ship-owner with the loss of the bale in question."

Denman, J. concurred in the judgment.

In that case although it was stated in the bill of lading that the goods were to be delivered to the consignee or his assigns, yet it was held that unloading at the quay in London was a good delivery according to the custom of that port. The case is practically on all fours with the present case. The custom at Freetown Port is to take the goods in lighters from the ship and load them on the quay. It is from the quay that delivery is made to the consignees, not from the ship; and whilst the goods are lying on the quay the defendants are in charge of them merely as agents of the plaintiff. Their responsibility as carriers came to an end when the goods were landed correctly on the quay.

It follows from the above that the defendants are not liable for the missing 20 bales of corrugated iron sheets. The action is dismissed with costs to the defendants to be taxed.

*Suit dismissed.*

---

## BIA *v.* MURRAY

WEST AFRICAN COURT OF APPEAL (Foster-Sutton, P., Coussey, J.A. and Luke, J. (Sierra Leone)): April 12th, 1954
(W.A.C.A. Civil App. No. 11/54)

[1] **Evidence — presumptions — presumption of law — presumption of absence of malice in privileged communication rebuttable by evidence of express malice:** Where a communication is covered by qualified privilege, there is a presumption of absence of malice which is rebuttable only by evidence of express malice; and it will be held that words are used with express malice if they are not used honestly and *bona fide* (page 372, lines 18–23).

[2] **Tort—defamation—defamatory statements—construction—words must not be construed so as to restrict unduly right to make communication and language used:** The words of a defamatory statement must not be construed in a way that will violate the doctrine that the law

does not restrict within narrow limits any right to make a communication nor the language used in doing so (page 372, lines 13–18).

[3] **Tort—defamation—privilege—qualified privilege—express malice—malice established if words not used honestly and bona fide:** See [1] above.

[4] **Tort—defamation—privilege—qualified privilege—express malice—presumption of absence of malice rebuttable by evidence of express malice:** See [1] above.

[5] **Tort—defamation—publication—defamation not published when document shown by plaintiff to unprivileged person—illiterate plaintiff does not publish defamation when asks third person to read it to him:** A document containing defamatory statements about the plaintiff is not published so as to render the defendant responsible under the law of defamation if the plaintiff publishes the defamatory matter by diverting the document from its normal course and showing it to an unprivileged person, and this is so even if the plaintiff is an illiterate who asks a third party to read the document to him (page 372, line 37—page 373, line 3).

The plaintiff (now the respondent) brought an action against the defendant (now the appellant) in the Supreme Court to recover damages for libel.

The plaintiff, who was employed in the stores department of a company, was charged with the theft of material from the store and acquitted. When the plaintiff returned to work, the defendant, who was the company's chief storekeeper, wrote on a report form about the plaintiff: "Involved in a theft of three yards of canvas and, although found not guilty, I maintain this canvas was stolen from our main stores." In accordance with the practice of the company, the form was given to the plaintiff to take to the labour office and the registration office for a decision on whether he should continue to be employed. The form was not in an envelope, and the plaintiff, who was illiterate, asked an unprivileged third person to read it to him. He then instituted the present proceedings against the defendant for libel, and the defendant raised the defence of qualified privilege.

The Supreme Court held that the occasion was in fact privileged but that the qualified privilege was destroyed by the defendant's express malice in expressing the view, as a fact rather than as an opinion, that the plaintiff had been "involved in a theft." Judgment was accordingly given for the plaintiff.

On appeal, the West African Court of Appeal considered

whether the defendant's report should be so construed, whether there was in fact evidence of malice on his part, and whether the statement contained in the report had been published in the manner required by law.

*Edmondson* and *Miss Wright* for the appellant;
*Massally* for the respondent.

COUSSEY, J.A.:

The questions that arise in this appeal are whether the libel complained of by the plaintiff was written by the defendant on a privileged occasion, and if so whether there was evidence of real or, as it is termed, express malice. There is the further question whether there was publication to a person other than the addressees.

The facts as stated by the learned trial judge are that the plaintiff, who was employed as an orderly in the stores department of the Sierra Leone Development Company at Marampa, was prosecuted before a magistrate and acquitted of the theft of three yards of canvas. Two days after his acquittal the plaintiff presented himself for work, when the defendant, who was then the chief storekeeper, pressed the plaintiff to reveal the person concerned in the alleged theft of the canvas. When the plaintiff refused to give information the defendant said: "I am going to get you dismissed." Afterwards the defendant wrote on a report form the words complained of, namely: "Involved in a theft of three yards of canvas and, although found not guilty, I maintain this canvas was stolen from our main stores." The defendant directed the plaintiff to take the form, not enclosed in an envelope, to the labour office and then to the registration office. In the ordinary course, the form would then have been passed on to the commercial manager and by him to the general manager, with whom the decision rested whether the plaintiff should be dismissed or further employed. This was proved to be the usual practice. After taking the form to a Mr. Cole at the labour office for registration, the plaintiff, who is illiterate, apparently out of curiosity as to its contents, took the form to a third person who read it to him. He thereafter kept the form, absented himself from the company without waiting to learn whether he would be further employed, and brought his action. The defendant had left Sierra Leone and the service of the company before the trial of the suit.

There is no evidence that it was the practice to place the form in an envelope before handing it to an employee.

The learned judge held that the occasion was privileged, but that the qualified privilege was destroyed by express malice in that the defendant, after the plaintiff's acquittal on the theft charge, still wrote expressing the view as a fact that he was involved in the theft of the canvas. The learned judge observed that if the defendant, instead of stating that the plaintiff "was involved in the theft," had stated that he was "of the opinion" that the plaintiff was involved in the theft, there would not be intrinsic evidence of malice. He awarded the plaintiff £50 general damages and from this judgment the defendant appeals.

With the reasoning of the learned judge I am respectfully unable to agree. It was the duty of the defendant in the protection of the interests of the company to report to his superior. To hold it against the defendant that he did not employ the precise words suggested by the learned trial judge would, I think, violate the important doctrine that the law does not restrict within narrow limits the right to make a communication in such circumstances nor the language used in doing so. There being a presumption in the defendant's favour of absence of malice and the plaintiff having to show actual malice in order to rebut that presumption, the question is not whether the plaintiff stole the canvas but whether the words were used by the defendant honestly and *bona fide* in reporting to the general manager.

Reading the three parts of the publication as a whole, the involvement of the plaintiff, his acquittal and the actual loss of the canvas, malice in my opinion is to some extent negatived by the fact that the defendant reported that the plaintiff had been found not guilty of the charge, leaving it open to the general manager to decide whether or not the plaintiff should be further employed. Nor do I consider that the words used by the defendant expressly reassert a belief in the actual charge preferred against the plaintiff of which he had been acquitted so as to be evidence of malice.

The learned judge made no finding that there was extrinsic evidence of malice, and I am of opinion that he erred in holding that there was intrinsic evidence. It follows that in my view the qualified privilege was not destroyed.

The learned judge also held that in handing the form to the plaintiff unenclosed, the defendant was responsible for the plaintiff's act in showing it to a third person to read to him. It is his misfortune to be illiterate, but that is no reason for holding the defendant responsible for this publication which was brought about

by the plaintiff himself diverting the form out of its routine course through the labour and registration departments to the manager of the company.

For the reasons I have given I am unable to agree that the plaintiff's claim was established and I would therefore allow this appeal, set aside the judgment of the court below and enter judgment for the defendant with costs both in this court and in the court below to be taxed.

FOSTER-SUTTON, P. and LUKE, J. (Sierra Leone) concurred.

*Appeal allowed.*

---

## REEKIE *v.* REGINAM

WEST AFRICAN COURT OF APPEAL (Foster-Sutton, P., Smith, C.J. (Sierra Leone) and Coussey, J.A.): April 12th, 1954
(W.A.C.A. Cr. App. No. 21/53)

[1] **Criminal Procedure—appeals—appeals against conviction—direction on evidence—in trial with assessors misdirection ground of appeal whether in judgment or summing-up:** In a trial involving the use of assessors a misdirection on the evidence is relevant to an appeal whether it is contained in the judge's summing-up to the assessors or in his judgment, and the fact that the judge makes the decision in such a case without being obliged to accept the assessors' opinions is irrelevant since he must always consider their opinions (page 376, line 39—page 377, line 7).

[2] **Criminal Procedure—appeals—appeals against conviction—direction on evidence—misdirection not fatal if no miscarriage of justice—burden on Crown to show verdict unaffected by misdirection:** The effect of the proviso to s.4(1) of the West African Court of Appeal (Criminal Cases) Ordinance (*cap.* 265) is that if there is a wrong decision on any question of law the appellant has the right to have his appeal allowed unless the Crown can show that, on a right direction, the decision must have been the same (page 376, lines 28–37).

[3] **Criminal Procedure—assessors—judge's summing-up—must direct assessors properly on law:** It is the duty of assessors to advise the presiding judge and although he is not bound to accept their opinions, it is his duty to consider them, and therefore it is essential that the assessors are properly directed as to the law (page 377, lines 8–11).

[4] **Criminal Procedure — assessors — opinion of assessors — judge not obliged to accept assessor's opinions but must consider them:** See [3] above.