

## RICHARDS, NORMAN and CUMMINGS-JOHN v. REGINAM

WEST AFRICAN COURT OF APPEAL (Coussey, P., Korsah, C.J. (G.C.)  
and Luke, J. (Sierra Leone)): June 5th, 1956  
(W.A.C.A. Cr. App. No. 6/56)

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- [1] **Criminal Law—libel—justification—burden on accused to prove truth of defamatory statement and public benefit from publication:** In criminal libel a plea of justification, which is a special plea by virtue of s.6 of the Libel Act, 1843, has the effect of shifting the evidential burden on to the accused to establish that the matter alleged was true and that publication was for the benefit of the public (page 439, line 36—page 440, line 5). 10
- [2] **Criminal Law—libel—justification—plea amounts to admission of defamatory nature of matter charged:** Under the special plea of justification provided by s.6 of the Libel Act, 1843, the accused admits publication of the libel charged and its defamatory nature; and the court cannot therefore be called upon to find that the matter was defamatory if the accused fails to establish the truth of matter charged or that it was published for the benefit of the public (page 440, lines 9-41). 15
- [3] **Criminal Procedure—pleas—justification in libel proceedings—justification amounts to admission of defamatory nature of matter charged:** See [2] above. 20
- [4] **Criminal Procedure—pleas—justification in libel proceedings—justification shifts burden of proof to accused:** See [1] above. 25
- [5] **Evidence—burden of proof—criminal cases—facts peculiarly within knowledge of accused—justification in libel proceedings—burden on accused:** See [1] above.

The appellants were charged in the Supreme Court with publishing a defamatory libel. 30

The complainant published several articles critical of an organisation known as the Sierra Leone Women's Movement, of which the appellants were members, and also critical of the appellants themselves. The appellants then published matter concerning the complainant, in which they alleged that he had approached them before publication of the articles, threatened to destroy their organisation and asked for money in return for which he would tone down the articles. The appellants were charged with criminal libel, pleaded not guilty and entered the special plea of justification provided by s.6 of the Libel Act, 1843. At the trial the prosecution proved publication by the appellants, but the appellants failed to 35 40

establish the truth of the matter published or that it was published in the public interest. They were convicted and bound over to keep the peace.

5 On their appeal against conviction, the West African Court of Appeal considered the evidentiary effect of the special plea of justification and whether, if it failed, the court still had to find that the published matter was capable of a defamatory meaning.

Case referred to:

10 (1) *Capital & Counties Bank v. Henty* (1882), 7 App. Cas. 741; 47 L.T. 662.

Legislation construed:

15 Libel Act, 1843 (6 & 7 Vict., c.96), s.6:

“... [O]n the trial of any indictment or information for a defamatory libel . . . the truth of the matters charged may be inquired into, but shall not amount to a defence, unless it was for the public benefit that the said matters charged should be published; and . . . it shall be necessary for the defendant . . . to allege the truth of the said matters charged in the manner now required in pleading a justification to an action for defamation . . .; and . . . if after such plea the defendant shall be convicted on such indictment or information it shall be competent to the court, in pronouncing sentence, to consider whether the guilt of the defendant is aggravated or mitigated by the said plea . . . Provided always, that the truth of the matters charged in the alleged libel complained of by such indictment or information shall in no case be inquired into without such plea of justification: Provided also, that in addition to such plea it shall be competent to the defendant to plead a plea of not guilty . . . .”

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30 *Zizer* for the appellants;  
*Smythe* for the Crown.

COUSSEY, P. delivering the judgment of the court:

The three appellants were convicted in the Supreme Court of Sierra Leone at the Freetown Criminal Sessions on February 27th, 1956 of criminal libel, and each was ordered to enter into a bond of £10 to keep the peace, etc., for one year and to come up for sentence if called upon within that period. They appealed against their convictions and, after hearing Mr. Zizer on their behalf, we dismissed the appeal without calling on counsel for the respondent and intimated that our reasons would be filed. We now give the reasons for dismissing the appeal.

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Besides setting out the actual words of the defamatory matter complained of, the indictment averred as innuendoes that the words meant that the complainant was guilty of the offence of threatening to publish with intent to extort and was guilty of dishonourable conduct and/or of robbing the Women's Movement. After pleas of not guilty had been taken, the appellants applied for, and were granted, leave to add a plea of justification which they did in the following terms:

"PLEA OF JUSTIFICATION.

Patience Richards, Clarice Norman and Constance Cummings-John say they are not guilty, and for a further plea they say that all the defamatory matters alleged in the indictment are true.

PARTICULARS

1. On a day in October 1954, Bamikole Sawyerr called on the defendants and other members of the Sierra Leone Women's Movement at No. 3, George Street, Freetown, and informed them that he had in his possession certain newspaper articles handed to him by a certain Stella Ralph James for publication in a newspaper called *The Hurricane* of which he was the proprietor and editor.

2. The said Bamikole Sawyerr further said that the publication of the said articles would destroy the goods of and break the Sierra Leone Women's Movement and that he was prepared to modify the articles if he was given monetary consideration. This the accused refused to accede to.

3. And all the accused say it was for the public benefit that the defamatory matters charged in the said indictment should be published by reason of the fact that the Sierra Leone Women's Movement is a body whose object is the promotion of the welfare of all women in Sierra Leone and is open to membership by all women, and by reason of the fact that Bamikole Sawyerr had published and did publish in the said *Hurricane* articles derogatory of the accused and of the Sierra Leone Women's Movement."

At the trial the prosecution proved the publication and then the appellants assumed the burden of offering evidence in support of the pleas of truth and publication in the public interest.

In criminal libel a plea of justification, which is a special plea by virtue of s.6 of the Libel Act, 1843, has the effect of shifting the evidential burden, since on that issue it is peculiarly within the

power and knowledge of the accused to prove the truth of the matter alleged in justification. As Archbold states in *Criminal Pleading, Evidence & Practice*, 33rd ed. at 1332 (1954): "Where the prisoner pleads justification, he virtually becomes the accuser and must establish the truth of the accusation or be found guilty."

The appellants' evidence fell far short of establishing the truth of the matter published or that it was published in the public interest and they were convicted, as already stated.

In arguing the appeal, Mr. Zizer submitted that by this plea in justification the appellants denied, or intended to deny, the innuendoes in the indictment set forth; alternatively, that if it could be held that the plea of justification had the effect of admitting the innuendoes, the court had still to find in law that the words were capable of the defamatory meaning alleged in the innuendoes. He referred to *Capital & Counties Bank v. Henty* (1). Mr. Zizer further argued that even if the special plea of justification failed, the appellants could still fall back on the general plea of not guilty, and that the court was bound expressly to find that the words were defamatory.

These submissions are based on a misconception of the effect of a plea under the Libel Act. Under a plea of not guilty some of the defences open to the accused are that the matter published is not defamatory or that it does not bear the innuendo alleged. Under the special plea, however, he admits the publication and that it is defamatory, but sets out to prove the truth of the matter charged. At common law the truth of a defamatory libel was no defence. It is only the Libel Act, 1843 that accorded to the accused the privilege of establishing, as a defence, the truth of the publication. In this case the plea, in itself, admitted that the matter charged was defamatory; it admitted the innuendoes charged in the indictment; indeed, the words employed by the appellants are—"and for a further plea they say that all the defamatory matters alleged in the indictment are true." The appellants cannot be heard to say that they did not know what they were pleading to.

It follows that when the court, rightly in our opinion, found on the evidence that it had not been proved that the words were true or published for the public benefit, the court was not called upon again to find that the very matter was defamatory, which the defence, by the plea, had already admitted. In our opinion Mr. Zizer's is an untenable proposition. The appellants could not re-open this issue.

The plea of justification in this case in fact precluded the defendant from making a no case submission upon the bare proof of publication of the defamatory matter.

When convicting the appellants, the learned Chief Justice exercised a discretion under s.6 of the Libel Act in binding over the appellants as he did. In our opinion the appellants would have been well advised, in all the circumstances, not to re-open this matter by way of appeal as they did. 5

*Appeal dismissed.*

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