BANKOLE-BRIGHT v. BOSTON and TAYLOR

Supreme Court (Webber, C.J.): March 9th, 1936

[1] **Evidence — opinion and belief — opinion of ordinary witnesses — defamatory statements — witnesses may give evidence of construction they put on statements but jury not bound to adopt opinions:** In an action for defamation the plaintiff may call witnesses to state how they understood the libel complained of, though the jury is not bound to adopt their opinions (page 414, lines 24–28).

[2] **Tort — defamation — defamatory statements — construction — witnesses may give evidence of construction they put on statements but jury not bound to adopt opinions:** See [1] above.

[3] **Tort — defamation — defamatory statements — statements imputing financial difficulty — imputation of bankruptcy defamatory:** Words implying that a person has committed an act of bankruptcy, if unfounded, are defamatory (page 417, lines 39–41).

[4] **Tort — defamation — defamatory statements — statements imputing moral obliquity — imputation that doctor's conduct insulting and dishonourable is defamatory and actionable per se:** Words that impute insulting and dishonourable conduct to a doctor and thus lower him in the estimation of ordinary right-thinking men are defamatory and actionable *per se* (page 416, lines 30–41).

[5] **Tort — defamation — defamatory statements — statements professionally disparaging — imputation that doctor professionally incompetent is defamatory and actionable per se:** Words that impute professional incompetence to a doctor and thus expose him to the ridicule of his colleagues are defamatory and actionable *per se* (page 416, lines 30–41).

[6] **Tort — defamation — privilege — qualified privilege — burden on defendant to prove newspaper report of legal proceedings fair and accurate to establish qualified privilege:** It is for the defendant to a libel action to establish qualified privilege by proving that a newspaper report of legal proceedings is fair and accurate, in which case he will have a complete defence (page 417, line 40–page 418, line 4).

[7] **Tort — defamation — privilege — qualified privilege — express malice — evidence of antecedent hostile relations between plaintiff and reporter to be considered in establishing express malice in newspaper report of legal proceedings:** Where the duty of reporting a court case in a newspaper with strict accuracy is not observed, and malice is alleged, it is proper to have regard to the antecedent hostile relations between the parties (page 419, lines 22–29).

[8] **Tort — defamation — privilege — qualified privilege — strict accuracy expected in newspaper report by legal reporter but lower standard acceptable for lay reporter:** While a few slight inaccuracies or omissions appearing in a newspaper report of a court case are immaterial when

made by a lay reporter, the strictest accuracy must be expected from and observed by a trained legal reporter (page 419, lines 3—15).

The plaintiff brought an action against the defendants to recover damages for libel in respect of two articles published in a daily newspaper.

The first newspaper article referred to a debate in the Legislative Council on a bill designed to stop the treatment of venereal disease by unqualified persons and to prohibit the importation of ineffective proprietary medicines. The plaintiff, a medical practitioner and a member of the Legislative Council, was reported as having said that capsules purporting to treat venereal disease had been found in the uterine cavity of "most" Freetown women and that these capsules could cause strictures in men. The plaintiff alleged that the article was falsely and maliciously printed and published by the defendants; that the words meant and were understood to mean that the plaintiff was professionally ignorant and incompetent and, as a representative of the people, had spoken words defamatory of and derogatory to the mothers of the community and was therefore not a fit person to represent them in the Legislative Council. He further alleged that in consequence of the article he had been injured in his reputation as a medical practitioner, so that many of his patients had left him and prospective patients had gone elsewhere. The defendants alleged that the facts in the article were true in substance and in fact and the opinions expressed were fair comment made in good faith and without malice upon the said facts which were matters of public interest.

The second newspaper article referred to an action brought against the plaintiff in the Supreme Court in which the judge was reported to have said that, if the bankruptcy laws were in force in Sierra Leone, the plaintiff "should have been made a bankrupt." The plaintiff alleged that these words were false and malicious and that they meant and were understood to mean that he was unfit to be, and disqualified from being, a member of the Legislative Council; that he had committed an act of bankruptcy for which he could have been made bankrupt; and that they had injured his reputation and brought him ridicule and contempt. The defendants alleged that these words formed part of the report of the proceedings in the Supreme Court and were true in substance and in fact; that they did not mean what the plaintiff alleged them to mean; and that they formed part of a fair, honest and accurate report of the proceedings by a journalist for the information of

the public, without any malice towards the plaintiff. The court observed that the defendants' plea that the words were true in substance and in fact was not borne out by the defendants' particulars which did not indicate that the plaintiff had at any time committed an act of bankruptcy, for in not a single case referred to had the judgment creditor proceeded to execution and seizure of the plaintiff's goods.

The court gave judgment for the plaintiff.

Cases referred to:

(1) *Andrews v. Chapman* (1853), 3 Car. & Kir. 286; 175 E.R. 558.

(2) *Broome v. Gosden* (1845), 1 C.B. 728; 135 E.R. 728, followed.

(3) *Hope v. Leng & Co. Ltd.* (1907), 23 T.L.R. 243.

(4) *Wernher, Beit & Co. v. Markham* (1901), 18 T.L.R. 143.

(5) *Woerman Linie v. Bankole-Bright*, Supreme Court, 1934, unreported.

Beoku-Betts for the plaintiff;
C.E. Wright for the defendants.

WEBBER, C.J.:

The plaintiff issued two writs against the defendants claiming damages for libel contained in two publications of the *Daily Guardian* issued on November 6th and 26th, 1934 respectively.

After pleadings were filed, the court at the hearing of the case allowed each party to amend the pleadings. The plaintiff was permitted to add to the words complained of in the issue of November 6th the following words: "Do you intend returning this man who disregards the interests of the whole community and thinks only of himself?" The defendants were permitted to add the sentence: "The said words are true in substance and in fact" to para. 9 of the original pleadings. The particular words, as amended, complained of in the issue of November 6th with the heading "The V.D. Bill in the Limelight" are as follows:

> "Are you going to vote for the man who has insulted our mothers? Why should Congress support a man who not only has insulted our women but our mothers, for women are our mothers? An African Member said, talking in the Legislative Council, that capsules are found in the abdomen of most of our women and by that men easily contract strictures. What an insult to the women in Freetown! Do you intend returning

this man who disregards the interests of the whole community and thinks only of himself?"

In the issue of November 26th appears the following, referring to the case of *Woerman Linie* v. *Bankole-Bright* (5): "His Lordship observed that if the Bankruptcy Law was in force here Dr. Bright should have been made a bankrupt."

In the pleadings referring to the first publication the plaintiff states that the defendants falsely and maliciously printed and published the same, and of him in the way of his profession as a medical practitioner of the Colony; that the words mean and were understood to mean that the plaintiff had made a statement which showed his ignorance of the medical profession and that he was incompetent and unfit to continue in the same; that they mean and were understood to mean that the plaintiff, a representative of the people, had spoken words defamatory of and derogatory to the mothers of the community and was therefore unworthy of the confidence of the people and was not a fit person to be elected to represent them in the Legislative Council.

It was further pleaded that in consequence of the said publication the plaintiff has been and is greatly prejudiced and injured in his credit and reputation and in his profession of surgeon and general medical practitioner, with the result that many of his patients have discontinued his services and other people who otherwise would have sought his services have in consequence gone elsewhere. And in addition, that he has suffered much annoyance and has been injured in his good name and has incurred public ridicule and contempt.

As to the second publication, the plaintiff pleads that the publication was false and malicious, that the words mean and were understood to mean that the plaintiff was unfit and disqualified to be a member of the Legislative Council and that the words mean and were understood to mean that the plaintiff had committed "an act of bankruptcy" for which he could be made a bankrupt.

The court having allowed the defendants to amend their statement of defence ordered particulars to be served on the plaintiff. These particulars of the plea of justification are contained in eight paragraphs. Mr. Betts for the plaintiff asked that with the exception of para. 6 all the paragraphs be struck out on the ground of irrelevancy. He quoted *Gatley on Libel and Slander*, 2nd ed., at 558 (1929); *Wernher, Beit & Co.* v. *Markham* (4);

2 *Halsbury's Laws of England*, 1st ed., at 13; and *Encyclopaedia of the Laws of England*, 1st ed., at 486.

After hearing Mr. Wright the court decided that paras. 1, 2, 3, 4, 5, 7 and 8 were irrelevant and struck them out. They dealt principally with unsatisfied judgment debts — in none of them except in para. 6 was any act of bankruptcy disclosed. Paragraph 6 then remained and it reads as follows:

> "6. In February 1931 a writ of fi. fa. was issued by the Supreme Court directed against the plaintiff in the action *Felix* v. *Bankole-Bright* for the sum of £32.14.0 and the plaintiff's goods were taken in execution and sold."

If this paragraph was true and correct undoubtedly the plaintiff committed an "act of bankruptcy." At the hearing it was proved that the statement was false and incorrect and that the plaintiff's goods were never seized nor sold in execution.

Before dealing with the two publications it will perhaps be convenient to refer to the several objections to evidence taken during the hearing of the case. The third witness for the plaintiff, Gabisi, was asked if, after reading the publication of November 6th, Dr. Bright who had previously attended him and his wife was attending them now. The question was disallowed on the ground that no special damages were sought. Several witnesses were asked what they understood the words in the November 6th publication to mean. These were objected to by Mr. Wright. Following *Broome* v. *Gosden* (2) the court allowed the questions to which answers were given. The plaintiff may call witnesses to state how they understood the libel though the jury are not bound to adopt the opinions of such witnesses. I now come to deal with the two alleged libels and all the evidence adduced at the trial.

As to the first alleged libel which appeared in the issue of the *Daily Guardian* of November 6th and which has already been set out in this judgment; at a meeting of the Legislative Council held on June 20th, 1933 the Acting Director of Medical and Sanitary Services moved that a bill entitled "An Ordinance to prevent the treatment of venereal disease otherwise than by qualified medical practitioners and to control the supply of remedies therefor, and for other purposes connected therewith" be read a second time. It was pointed out that the main objects of the bill were (a) to stop the treatment of venereal disease by unqualified persons and (b) to prohibit the importation of those quack medicines which are priced so highly in proportion to other proprietary medicines and

which are paid for by the poor people and prove so utterly useless for the cure of the disease. It would appear from the report of these proceedings that the members of the Council were unanimous and in entire agreement with the aims and objects of the bill.

The plaintiff, as first urban member, prefaced the remarks which formed part of the plaintiff's speech in Council as follows.

> "With reference to the statement of the Honourable Director of Medical and Sanitary Services who opened this discussion, about the danger that is being done particularly to our women folk by the use of some of these patent medicines, we medical men know how often under examination we have discovered indissoluble capsules in the uterine cavity of our women folk which are dangerous to health; we know what serious effects have been brought about by these patent medicines and the havoc they have wrought on the men — their uses have even resulted in the development of stricture on some men. And if the Government has come to this Council with this Bill restricting the advertisements which will lead to the importation of such medicines, I say it is a proper course."

I may here go back to the debate in the Council. The bill was unanimously supported but three members thought it was premature, not because there was no need for it, but because at the time the bill was discussed there was then not a sufficient number of clinics for free treatment. In other words, the bill did not supply adequate provision for the number of cases requiring treatment.

The plaintiff in his speech referred to the remarks made by the mover as to the danger being done particularly to our women folk by the use of patent medicines and said as follows:

> ". . . [W] e medical men know how often under examination we have discovered indissoluble capsules in the uterine cavity of our women folk which are dangerous to health; . . . ."

It will be noticed here that the report puts a semicolon and that the speech starts with the words "We. . . know." The speech then continues with the same words "We know" and continues "what serious effects have been brought about by these patent medicines and the havoc they have wrought on the men; their uses have even resulted in the development of stricture on some men."

The speech deals separately as to women and separately as to men and it deals with those women and men who have had the

misfortune to be afflicted with venereal disease. There is not a word in this speech even suggesting a proportion of men and women out of the whole community so afflicted.

Now I will compare the article as reported in the issue of November 6th. It begins as follows:

> "Are you going to vote for the man who has insulted our mothers? Why should Congress support a man who not only has insulted our women but our mothers, for women are our mothers?"

This statement is without any foundation in fact. Again it is said —

> "An African member said, talking in the Legislative Council, that capsules are found in the abdomen of *most* of our women and by that men easily contract strictures."

Now, Dr. Bright never suggested that over 50% of Freetown women had venereal disease — the use of the word "most" must have been imagined by the writer; and as to reference to stricture it is quite untrue that Dr. Bright said that by the use by women of capsules men have contracted stricture.

I am unable to see how it is possible to hold that the rolled-up plea in para. 7 —

> "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 made in good faith and without malice upon the said facts which are matters of public interest"

— can be sustained. There is neither truth nor fair comment in the article above referred to and as to the words — "Do you intend returning this man who disregards the interests of the whole community and thinks only of himself?" — there is not the slightest justification for the use of such words. They reflect on the honour of the plaintiff and impute to him improper motives; and as to the whole paragraph, it is a libel because it imputes to the doctor insulting conduct and dishonourable conduct. The article tends to lower the plaintiff in the estimation of right-thinking men and it exposes him to hatred and contempt. It tends to affect him by way of his profession and opens him to ridicule among his fellow practitioners who know that capsules introduced into the vaginal cavity of women do not cause stricture in the urethra of a man's organ.

In my opinion the words are false and defamatory and tend to injure the plaintiff in his profession and are actionable *per se*. The whole speech of the plaintiff in the Legislative Council showed his

solicitude for the welfare and health of the community whom he represented and this was appreciated by the husbands, brothers and sons of these so-called "insulted" mothers by the fact that they returned him as a duly elected urban member.

Although the proof of malice is not essential in these circumstances I may point out that there is sufficient evidence to support the plea of malice.

I do not impute perjury in the evidence given by Mr. J.F. Boston who denied all occasions on which he is alleged to have used threatening words to Dr. Bright. I can only say that years have gone by — he has probably forgotten these occasions, but I refuse to say that all the respectable and trustworthy witnesses who spoke of these occasions have committed wilful perjury, nor am I prepared to doubt the veracity of Frank Duncan who gave evidence of the first defendant's attitude towards the plaintiff at the polling booth. I hold that there is sufficient extrinsic evidence showing malice.

I find that the article in the issue of November 6th, 1934 is libellous and is not fair comment and that the plaintiff is entitled to damages.

Now as to the second publication of November 26th, in which the following words appear: "His Lordship observed that if the Bankruptcy Law were in force here Dr. Bright should have been made a bankrupt." These words, it is claimed by the plaintiff, mean and were understood to mean that the plaintiff was unfit and disqualified to be a member of the Legislative Council and that he had committed "an act of bankruptcy" for which he could have been made a bankrupt and that these words have injured him in his credit and reputation and have brought him public scandal, ridicule and contempt. The defence is that these words formed part of the report of the proceedings in the Supreme Court of this Colony on November 24th, 1934 in an action entitled *Woerman Linie* v. *Bankole-Bright* (5) and that the words are true in substance and in fact, that they do not mean what the plaintiff alleges them to mean, that they are not defamatory and that they form part of a fair, honest and accurate report of such proceedings for the information of the public and in the usual course of the business of public journalists, without any malice towards the plaintiff, and are *bona fide.*

As the words impute bankruptcy they are libellous. Then it is for the defendants to prove qualified privilege: that they are a fair and accurate report of the proceedings; and if they discharge

this onus, then it is for the plaintiff to prove malice. "If what is stated is substantially a fair account of what took place, there is an entire immunity for those who publish it" — *per* Lord Campbell, C.J. in *Andrews* v. *Chapman* (1) (3 Car. & Kir. at 289; 175 E.R. at 559). As in the evidence of Mr. J.F. Boston, so in the evidence of Mr. Metzger: I do not impute any attempt on his part to commit perjury, but Mr. Metzger was mistaken when he said that the judge never remarked on the subject of bankruptcy. His own colleague Mr. Hyde, who appeared for the wife of his client, heard some reference to the position of the plaintiff in case the bankruptcy laws applied to this Colony. Mr. Hyde was called as a witness for the defence; his evidence certainly shows that the question of bankruptcy was mooted by Mr. Lightfoot Boston in the examination of Dr. Bright as to his means. In this respect Mr. Metzger's version as to how this question arose was correct but I cannot accept the statement by him and by the clerk of the court that the judge made no passing comment on the bankruptcy laws and the plaintiff's possible position in relation to these laws. I am prepared to accept the evidence of Mr. Hyde who was associated with Mr. Metzger for the defence in that case. He supported Mr. Metzger in the statement that Mr. Boston was addressing the court. He must have been, if we accept Mr. Hyde's version, for the judge begins his remarks with a conjunction. He stated as follows:

> "But he (meaning Dr. Bright) had not been made a bankrupt and if he had been made then what Mr. Boston suggested could be adopted and of course the bankruptcy laws are not here"

and in cross-examination he said he did not remember if Mr. Metzger objected to Mr. Boston's remark but he did not hear Mr. Boston use the word "bankruptcy", nor did he hear the judge ask Mr. Boston if the bankruptcy laws were in force. Now compare Mr. Lightfoot Boston's version of what took place. He said he made no reference to bankruptcy and that it was the judge who asked if the bankruptcy laws operated. Then he continued as follows: "Then the judge remarked: 'If the bankruptcy laws operated these proceedings could have been taken to make the debtor a bankrupt.' "

Now how could *these* proceedings (meaning the examination of the debtor under a judgment summons) have been taken to make the debtor a bankrupt? There must be an act of bankruptcy before a receiving order can be made. But assuming that some remark was

made by the judge relating to bankruptcy, the report in the paper of November 26th which forms the subject matter of this libel was not accurate. The difference between "could" "should" and "would" might perhaps not appeal to a layman reporter, although laymen are quite able to appreciate their differences in meaning, but accuracy, especially as to reports on matters such as involve a debtor in bankruptcy and the prospect of such proceedings being taken, must be expected from one who is not only the solicitor for the judgment creditor but a staff law reporter of the *Daily Guardian.* A few slight inaccuracies or omissions are immaterial when made by laymen and would not be judged by the same strict standard of accuracy as a "Report purporting to come from the hand of a trained lawyer." (Collins, M.R. in *Hope* v. *Leng & Co. Ltd.* (3) (23 T.L.R. at 244)). Here we must expect accuracy and fairness and if there is a garbled version of what happened we must seek the reason for it.

The plea that the words were true in substance and in fact is to confirm the judge's remarks, yet in the defendants' particulars there appears nothing to show that at any time the plaintiff had committed an act of bankruptcy. In not a single case referred to in the particulars did the judgment creditor proceed to execution and seizure of the goods. Mr. Lightfoot Boston and the plaintiff had not been on speaking terms for years and their feelings towards each other were distinctly hostile. A duty was cast upon Mr. Boston in reporting this case to observe the strictest accuracy and if this is not done the question of fairness arises and when one considers the antecedent relations between him and the plaintiff one is driven to the conclusion that the report was not fair apart from its inaccuracy and that Mr. Boston was actuated by malice.

I find that the libel in the report contained in the issue of the *Daily Guardian* is proved, but before I assume the functions of a jury in awarding damages I must express my gratitude to counsel on both sides for the assistance given to the court in bringing to its notice all the relevant legal authorities on the subject. I have carefully considered them all.

Now as to damages, I will deal with each libel separately. As to the first libel contained in the publication of November 6th, I award £200. As to the second libel contained in the publication of November 26th, I award £50. As to this libel the damages might have been nominal had the defendants not pleaded and persisted in the plea of justification which they were unable to prove or support.

I enter judgment for the plaintiff for £250 and order the defendants to pay the costs of the action.

Judgment for the plaintiff.

HEBRON and THOMPSON v. CHELLARAM

West African Court of Appeal (Kingdon, C.J. (Nig.), Yates, J. (G.C.) and Macquarrie, J. (Sierra Leone)): March 27th, 1936

[1] **Civil Procedure — appeals — appeals by case stated — appeal on point of law — trial judge may state case for opinion of appeal court at any stage of proceedings provided that answer will finally decide issue.** The West African Court of Appeal (Civil Cases) Ordinance, 1929, s.4 gives a trial judge the right to state a case on a question of law for the opinion of the Court of Appeal at any stage of the proceedings, whether or not he has proceeded to judgment or reached a decision (*per* Kingdon, C.J. at page 421, lines 19—29; Yates, J. concurring at page 421, line 36—page 422, line 25; Macquarrie, J. dissenting at page 423, lines 14—26) provided that the Court of Appeal's answer will finally decide the issue, since the object of procedure by way of case stated is to ensure the *finality* of a decision (*per* Yates, J. at page 421, lines 34—35).

The Supreme Court stated a case based upon a question of law in an issue before it for decision by the West African Court of Appeal.

The preliminary point for consideration by the West African Court of Appeal was the proper interpretation of s.4 of the West African Court of Appeal (Civil Cases) Ordinance, 1929: did the section empower a trial judge to reserve a question of law, on a case stated by him, for consideration by the Court of Appeal (a) at any stage of the proceedings, (b) at any stage of the proceedings provided that the court's answer would finally decide the issue, or (c) only after he had given a judgment or decision on the case?

The court ruled that the case stated was properly before the court.

Legislation construed:

West African Court of Appeal (Civil Cases) Ordinance, 1929 (No. 9 of 1929), s.4:

The relevant terms of this section are set out at page 421, lines 11—18.

Lightfoot Boston and *Hotobah-During* for the plaintiffs;
C.E. Wright for the defendant.