[SUPREME COURT]

Freetown
Aug. 31,
1961

Luke J.

S. E. BALOGUN PALMER . . . . . *Plaintiff*

v.

F. E. A. BOSTON, J. D. DIXON BAKER, S. C. WRAY AND J. B. JENKINS-JOHNSTON . . . . . *Defendants*

[C. C. 80/57]

Tort—Libel—Statement of reason for censure of plaintiff by City Council—Justification—Privilege—Malice—Fair comment—Immunity—Freetown Municipality Act (*Cap.* 65, *Laws of Sierra Leone*, 1960) *s.* 119.

Plaintiff was an alderman on the Freetown City Council. He had a conversation with another councillor and a journalist, as a result of which, on January 8, 1957, an article appeared in " The African Vanguard " headlined " City Council Administration Severely Criticised. Councillor Balogun Palmer says certain accounts were muddled." As a result of this article, the Council met in committee on January 28 and plaintiff was " severely censured." This decision was reported to a full meeting of the Council held on February 11, and on February 12 was reported in the " Daily Mail," which also contained an editorial headed " Why gag members ? " which was critical of the Council's action. On February 16 a letter from J. B. Jenkins-Johnston, Town Clerk, appeared in " The Daily Guardian." This letter stated, inter alia:

> " . . . Alderman Palmer was not censured by his colleagues simply for giving information to the special correspondent of ' The African Vanguard,' but for giving misleading and incorrect information and refusing to admit or deny that he gave such information . . . it is improper for one member of that body to make statements to a pressman which are not only incorrect but calculated to bring his colleagues to disrepute."

On the basis of this letter, plaintiff brought suit for defamation against the manager, editor and printer of " The Daily Guardian " and the Town Clerk. The only statement of defence filed was on behalf of the Town Clerk, who pleaded the defences of justification, fair comment, privilege and immunity. The defence of immunity was based on section 119 of the Freetown Municipality Act, which provides:

> " No matter or thing done and no contract entered into by the Council, and no matter or thing done by any member or officer of the Council or other person whosoever acting under the direction of the Council, shall, if the matter or thing were done or contract were entered into bona fide for the purpose of executing this Ordinance, subject any member or officer of the Council or any person acting under the direction of the Council personally to any action, liability, claim or demand whatsoever."

Held, for the fourth defendant (the Town Clerk), (1) plaintiff established a prima facie case of libel.

(2) Fourth defendant succeeded in proving that the defamatory statement was true, thereby establishing the defence of justification.

(3) The defamatory statement was made on an occasion of qualified privilege, because plaintiff, by giving information to newspaper correspondents which resulted in the publication of certain newspaper articles, thereby invited fourth defendant as Town Clerk to make replies to the questions raised by the articles.

(4) There was no evidence that fourth defendant was actuated by malice in making the defamatory statement.

(5) Fourth defendant succeeded in proving that the defamatory statement was a fair comment on a matter of public interest.

(6) In making the defamatory statement, fourth defendant was protected from personal liability by the provisions of section 119 of the Freetown Municipality Act.

Cases referred to: *Taylor* v. *Hawkins* (1851) 16 Q.B. 308, 20 L.J.Q.B. 313; *Wright* v. *Woodgate* (1835) 150 E.R. 244; *Somerville* v. *Hawkins* (1851) 138 E.R. 231; *Kemsley* v. *Foot and others* [1951] 1 All E.R. 331; *Merivale* v. *Carson* (1887) 20 Q.B.D. 275, 58 L.T. 331; *Aga Khan* v. *Times Publishing Co.* [1924] 1 K.B. 675, 93 L.J.K.B. 361, 130 L.T. 746.

Manilius R. O. Garber for the plaintiff.

Solomon A. J. Pratt for the fourth defendant.

LUKE J. Plaintiff's claim is for damages for libel which was contained in a publication which appeared in "The Daily Guardian" on February 16, 1957. By the statement of claim filed and delivered plaintiff alleged inter alia:

"On page 4 of the issue of the said newspaper dated 16/2/57 under the heading 'Why Gag Members' the defendant falsely and maliciously printed and published of the plaintiff and of him in the way of his office the following words: 'Alderman Palmer was not censured by his colleagues simply for giving information to the special correspondent of "The African Vanguard" but for giving misleading and incorrect information and refusing to admit or deny that he gave such information . . . it is improper for one member of that body to make statements to a pressman which are not only incorrect but calculated to bring his colleagues to disrepute.'

"By the said words the defendant meant and was understood to mean that the plaintiff was deceitful, unreliable and untruthful and is unfit to retain his said office.

"The plaintiff has in consequence been seriously injured in his character, credit and reputation and in the way of his said office and has been brought into public scandal, odium and contempt."

Defendant delivered a statement of defence in which he stated inter alia . . .

2. "That the Freetown City Council is a body politic and a creature of an Ordinance entitled Freetown Municipality Ordinance, Cap. 91 of the Laws of Sierra Leone.

3. "In answer to paragraph 3 of the statement of claim the defendant says he is not in a position to admit or deny that the publication referred to is of and concerning the plaintiff as such Alderman and puts the plaintiff to the strictest proof thereon.

4. "In further answer to paragraph 3 the defendant says that the Mayor being the Civic Head of the Council and thereby having a common interest with and a duty to the Alderman, Councillors and Citizens of Freetown instructed him the defendant to issue an official communiqué stating the true facts of the alleged incidents in Council in Committee assembled ad hoc.

5. "That it was the defendant's duty as Town Clerk aforesaid to write and publish the words (if written at all) which were written by the defendant in pursuance of the said duty and in the interest of the public

efficiency and good order without malice towards the plaintiff and in the honest belief that the publication (if any) was true. The defendant will contend that both the occasion and communication are therefore privileged.

6. "The defendant says that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest."

Defendant in other paragraphs gave particulars of justification and fair comment and said that he did not write or publish any of the said words with any of the meanings alleged. Further he said that he will invoke the provisions of section 109 of the Freetown Municipality Ordinance (Cap. 65) and plead that he is not personally liable.

Having outlined fully the pleadings in this case I now turn to the evidence which has been led by the plaintiff, on whom the burden of proof lies. In paragraph 3 of the statement of defence defendant puts plaintiff to strict proof as to whether or not he is an Alderman. Plaintiff deposed that in 1957 he was an Alderman in the Freetown Municipal Council and whilst such an Alderman he had a conversation with another Councillor and a journalist in consequence of which a publication appeared in "The African Vanguard" of January 8, 1957, a copy of which was put in evidence and marked "A." As a result of Exh. "A" he received a letter which, as he said, purported to come from another Alderman. That letter when shown to him he said came from the Town Clerk (defendant). On receipt of Exh. "B" by the Town Clerk a Committee of Council was convened on January 28, 1957, at which plaintiff said Exh. "B" was discussed and a decision that plaintiff should be censured was arrived at and he tendered the minutes marked "C." This resolution was reported to a full meeting of Council held on February 11, 1957, and recorded in Council's minutes which were tendered and marked "D." Plaintiff said this was a meeting at which pressmen were present. In consequence of this Council meeting on February 11, 1957, two articles appeared in the Sierra Leone "Daily Mail" of February 12, 1957, which were tendered and marked "E1" and "E2." As a result of these publications there appeared two publications in the Sierra Leone "Daily Mail" and the "Daily Guardian" dated February 15 and 16, 1957, respectively, which were tendered and marked "F" and "G." It was the publication in the "Daily Guardian" (Exh. "G") which plaintiff alleges contained the libel complained of which reads:

> "That Alderman Palmer was not censured by his colleagues simply for giving information to the special correspondent of 'The African Vanguard' but for giving misleading and incorrect information and refusing to admit or deny that he gave such information."

Following this paragraph was the comment which reads:

> "The Mayor feels however that in any democratic body when once a decision has been taken by the majority it is improper for one member of that body to make statements to a pressman which are not only incorrect but calculated to bring his colleagues to disrepute."

Plaintiff went on to say that by those words he was made to appear deceitful, unreliable and untruthful and further that he was not fit to retain his office as Alderman. He further deposed that the information he gave to "The African Vanguard" was correct and his reason for refusing to admit or deny

when asked was due to the high handed manner in which Alderman Davies wrote Exh. " B." In consequence of Exh. " G " several persons queried him in the street and he was so ashamed of himself that he absented himself from Council meetings for about four months and that just about this time he had applied as a candidate to contest the general election to the House of Representatives and that he lost miserably. Whereas in the past he had always won.

Under cross-examination he admitted that his previous contests were for local government elections when he sailed under the banner of the Ratepayers' Association whereas in the general election he was not a member of any political party and stood as an Independent candidate. In answer to a question whether the press correspondent with whom he had the conversation reported him correctly he said " yes." He then went on to say, " I told Sam Metzger that certain accounts of Council were muddled. I told him all was not well with the administration of the City Council. I told him of a certain action instituted by Mrs. P. Macauley. At the time I did not go to read the case file of Mrs. Macauley against City Council." He further said that he got his information from papers in his possession. When asked whether he was a member of the Committee appointed to look into Mrs. Macauley's water supply, he said, " I cannot now say I was a member appointed to look into the matter of Mrs. Macauley's water supply. I was present at these Committee deliberations. I received a copy of the report of the inquiry into Mrs. Macauley's water supply." When asked whether the report contained anything about estimates, his reply was " Unless I see it." When it was shown him his answer to the question which had been asked was " having refreshed my memory from the report I cannot say if it mentions anything about estimates. I say if the report contained statements of estimates my comments in Exh. 'A' will have been misleading." Plaintiff's answers to most of the questions asked him were evasive and it was only when followed up by documentary evidence that he gave a straight answer, e.g., " I don't know the difference between estimates and quantities forming the estimates." " I cannot remember if in consequence of Exh. ' J ' I received a statement containing details of how the estimates were made up."

" Looking at Exh. ' K ' dated September 19, 1956, I now remember receiving details of estimates." He was again shown Exh. " A " the article containing the interview he gave " The Vanguard " correspondent and asked if after seeing all the exhibits " H," " J " and " K " he still says Mrs. P. Macauley's account and other Council accounts were muddled and he said " yes." When asked to name those his reply was " I cannot say so now." He was shown Exh. " C " (report of Council-in-Committee) and asked whether at that meeting he was shown Exh. " A " and asked to either admit or deny and his reply was: " Looking at Exh. ' C ' I say I did not admit or deny in Council that I gave that information to ' Vanguard ' correspondent." He admitted that at the time Exhs. " F " and " G " were written Mr. L. Genet was the Mayor and that he did not agree with defendant's counsel when he suggested to him that the words which he has complained of do not bear the meanings he has attached to them.

He was re-examined when in answer to a question by his counsel why he did not admit or deny he said: " The reason why I did not admit or deny giving the information to ' The Vanguard ' correspondent was the high-handed tone of Alderman Davies's letter."

He called two witnesses both of whom deposed that they read Exh. "G" the article in the "Daily Guardian" and after reading it they felt Mr. Palmer (plaintiff) whom they had always regarded as a man of upright character does not live up to that standard and changed their opinions of him. This closed plaintiff's case.

Defendant gave evidence and deposed that he was Town Clerk, Freetown City Council and knows plaintiff who was an Alderman in the City Council during the period of this incident relating to a Mrs. Patience Macauley's application for water supply to her premises. Owing to her delay in paying into the Council the estimated cost for the installation and the inefficient handling of this matter by a Mr. Gibson, one of the Council's employees, this matter resulted in litigation which was happily settled. After the settlement of the litigation Council instituted an inquiry into this matter and the result of the findings was embodied in Exh. "H." Subsequent to the finding in Exh. "H" plaintiff addressed two letters, Exhs. "J" and "K" dated September 10, 1956, and September 19, 1956, respectively, to the Council. In consequence of Exhs. "J" and "K," the Council referred the matter to one of its Committees called the Municipal Trading Committee to look into the matter. That Committee sat and inquired into the complaint which plaintiff had submitted and made reports which were tendered and marked "L" and "M" respectively.

Exhibits "L" and "M," the reports of the Committee to which plaintiff's complaints had been submitted before plaintiff had his interview with "The Vanguard" correspondent, showed that the Committee had found no substance in plaintiff's complaints. Defendant then said his attention was called to Exh. "A" by Alderman Davies in Exh. "B." As a result of Exh. "B" a meeting of Council-in-Committee was called and met on January 28, 1957. The recommendation which went to Council for adoption on February 11, 1957, was that plaintiff be severely censured. Just as this decision was taken there appeared in the issue of the Sierra Leone "Daily Mail" dated February 12, 1957, two articles tendered as "E1" and "E2." It was in consequence of these two publications that the Mayor, Mr. Genet, instructed the defendant to write a rejoinder to the Press. He denies attributing to this article what plaintiff has inserted as an innuendo.

Under cross-examination the witness was asked about the circular letter he wrote defendant when Mrs. P. Macauley put the Council in court. He was also asked about the letter (Exh. "N") plaintiff wrote to him forwarding a letter to the chairman and members of the Municipal Trading Committee. He was further asked what he did when the Mayor gave him the instructions to send the rejoinder and in reply stated that he prepared the draft and submitted it to him. After the Mayor had approved he then sent it to the "Daily Mail" on February 12, 1957, and "The Guardian" on the 14th of the same month. When asked why he did not send both articles on the same day he said he first sent it to the paper where the plaintiff made his publication. He denied that it was done with an ulterior motive as he and plaintiff did not hit it off. He also denied that he and plaintiff did not hit it off when plaintiff was in Council, as plaintiff was one of those who had objected to his being sent abroad for training, and he said that he was not actuated by spite when writing the letter.

Defendant called three witnesses; one was the Mayor and the other two were an Alderman and a Councillor. Defendant's first witness deposed that he was Mayor at the time of this incident which arose out of the water supply

installation of Mrs. P. Macauley, that this matter was inquired into by one of Council's Committees and that a decision was taken as recorded in Exh. "P," minute 330, when the matter was closed. He was shown Exhs. "A" and "B" and he said they were brought to his notice. As a result he called up Council-in-Committee and a resolution was taken on them when plaintiff was severely censured. He also said he saw Exhs. "D" and "E1" and "E2." "Seeing these exhibits I refuted Exhs. 'E1' and 'E2' by writing a letter through the Town Clerk (defendant) (Exh. 'Q') and I sent copies of Exh. 'Q' to all the Press in Freetown." He then referred to the publication in the "Daily Mail." He referred to the publication in the "Daily Mail" of the Town Clerk's letter as a garbled one but said that "The Guardian" published the article which was sent it.

Under cross-examination, he said he gave defendant the lead of the letters he should write, although he did not dictate them to him, and that they were written under his instructions and signed after he had passed them.

The two other witnesses who gave evidence for the defence stated that the reason plaintiff was censured was that he had given out what were normally confidential matters to the public and that they were distorted, thereby making them misleading, and when questioned on them he gave no reply.

Having outlined very exhaustively the evidence which has been given in this case I shall now consider whether the publication complained of is a libel, and, if so, whether the defences raised such as justification, privilege, fair comment and immunity are available to relieve defendant from liability. Gatley on Libel and Slander (4th ed.), on p. 15, defines libel as follows:

> "Any written or printed words which tend to lower a person in the estimation of right-thinking men, or cause him to be shunned or avoided, or expose him to hatred, contempt, or ridicule, constitute a libel."

Plaintiff gave evidence of the publication which he tendered and called witnesses thereby establishing a prima facie case.

In order to succeed on a plea of justification defendant must prove that the defamatory imputation is true. Defendant also must justify the precise imputation complained of and lastly at common law, under a plea of justification the defendant must prove the truth of all the statements in the libel. Defendant gave particulars of justification. Evidence was given by defendant and his witnesses that at the meeting of the City Council-in-Committee plaintiff was asked to admit or deny if he gave the newspaper correspondent the information which appeared in that paper (Exh. "A") and he refused to give an answer and so he was censured by his colleagues. To show that the facts which defendant gave to the correspondent were incorrect and misleading several documents were tendered all of which had been seen and were known by the plaintiff.

The defence of qualified privilege has been raised. Having heard the evidence can it be said that defendant has been able to establish that the occasion and communication, Exh. "G," are privileged? Plaintiff, by giving information to newspaper correspondents whereby Exhs. "A," "E1" and "E2" appeared, invited defendant as Town Clerk to make replies to the inquiries which those articles called for. In the same edition of Gatley, at pp. 274–275, appears the following:

> "(5) Statements made in reply to inquiries by, or on behalf of, the plaintiff, or at his invitation: As a general rule, where defamatory matter

is published in answer to inquiries made by the plaintiff, or by some person interested in his behalf, the answer is privileged if it does not go beyond the question asked."

See the case of *Taylor* v. *Hawkins* (1851) 16 Q.B. 308.

In another passage of Gatley, on p. 197 under qualified privilege the following is seen:

"Where a defamatory statement is published on an occasion of qualified privilege the presumption of malice which arises from the publication is rebutted, and the plaintiff will only succeed if he can prove that the defendant was not using the occasion honestly for the purpose for which the law gives protection but was actuated by some indirect motive not connected with privilege, i.e., malice in the popular acceptation of the term."

In the case of *Wright* v. *Woodgate* (1835) 150 E.R. 244, 246, Baron Parke said, inter alia:

"The proper meaning of a privileged communication is only this; that the occasion on which the communication was made rebuts the inference (of malice) prima facie arising from a statement prejudicial to the character of the plaintiff, and puts it upon him to prove that there was malice in fact—that the defendant was actuated by motives of personal spite or ill-will, independent of the occasion on which the communication was made."

This definition or meaning was cited and approved in *Somerville* v. *Hawkins* (1851) 138 E.R. 231, and several other cases.

Plaintiff has not led any evidence to establish malice. The only attempt was in questions put by his counsel to defendant under cross-examination in which defendant said:

"I deny that plaintiff and I did not hit it off well when plaintiff was in Council. Plaintiff opposed my being sent to England for further training. I deny that in writing the article I was actuated by spite. I wrote it acting under instructions from my boss."

There is no doubt that the finding of privilege which rests with the judge on a trial of libel and slander can be declared in this case.

Dealing with the defence of fair comment, defendant in his defence says that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact and in so far as they consist of expressions of opinion they are fair comment on a matter of public interest. Particulars were given which showed that plaintiff had given information to newspapermen which appeared in an issue dated January 8, 1957, under the heading "City Council Administration severely criticised. Councillor Balogun Palmer says certain accounts were muddled." In the issue of another local newspaper dated Tuesday, February 12, 1957, there was an Editorial headed "Why gag members?" In these two articles plaintiff had made scathing remarks on the working and administration of the Corporation and the comment which appeared in Exh. "G" of which plaintiff now complains would have been a matter which, if the case was being tried by judge and jury, would have been left to a jury to determine. Evidence was led by defendant and his witnesses that these statements which plaintiff gave to the newspapermen were not only incorrect but were calculated to bring his colleagues into disrepute, e.g., "In his opinion, many of the present Councillors should be removed, and better

people put in their places. Why? Because their attitude to the issue left much to be desired." "He made this point because, according to him, when important issues like these are raised a special committee is set up to investigate but such a committee does not report back to the Council. This is wrong he said and amounts to an element of suppression of facts." All these statements are untrue as disclosed by Exhs. "D," "M" and "S" respectively.

There are several authorities dealing with fair comment but for the present case I shall only quote from the judgment of Lord Justice Birkett in the case of *Kemsley* v. *Foot and Others* [1951] 1 All E.R. 331 at p. 338:

> "The present appeal raised, as I think, questions of very great importance. The defence of fair comment is now recognised to be one of the most valuable parts of the law of libel and slander. It is an essential part of the greater right of free speech. It is the right of every man to comment freely, fairly and honestly on any matter of public interest, and this is not a privilege which belongs to particular persons in particular circumstances. It matters not whether the comments are made to the few or to the many. Whether they are made by a powerful newspaper or by an individual, whether they are written or spoken, the defence that the words are a fair comment on a matter of public interest is open to all. When defendants who wish to rely on this defence are deprived of it, the importance of the matter is manifest to all, and the character of the defence, as I have just summarised it, is not without importance in the consideration of the facts in the present appeal. It is now very well established that this defence of fair comment has a wide application. In *Merivale* v. *Carson* reported in (1887) 20 Q.B.D. 275; 58 L.T. 331 Lord Esher M.R. made this plain in what is now a celebrated passage (20 Q.B.D. 280): 'Every latitude must be given to opinion and to prejudice, and then an ordinary set of men with ordinary judgment must say whether any fair man would have made such a comment. . . . Mere exaggeration or even gross exaggeration, would not make the comment unfair. However wrong the opinion expressed may be in point of truth, or however prejudiced the writer, it may still be within the prescribed limit. The question which the jury must consider is this—would any fair man, however prejudiced he may be, however exaggerated or obstinate his views, have said that which this criticism has said?'"

Applying this to the case before me, I say defendant in this case has supplied plaintiff with the particulars on which he based his fair comment, as was stated by Scrutton L.J. in the case of *Aga Khan* v. *Times Publishing Company* [1924] 1 K.B. 675; 130 L.T. 746 may be ordered to be delivered in cases where the plea appears in the form called "rolled up plea." The defence is one which has been amply proved and if this case was being tried by a jury I have no doubt that they would find for the defendant. Plaintiff's half-hearted attempt to prove malice, which could have destroyed the pleas of justification, privilege and fair comment, was unsuccessful.

Lastly I shall deal with the immunity which defendant has claimed. Evidence was given that he is Town Clerk of the Freetown Municipality, which is a creature of our local Ordinance, and that the matter in question relates to the Freetown Municipal Council. The then Mayor, Mr. Lucien Genet, gave evidence in which he stated that he instructed defendant to refute the allegations which plaintiff had made against the Council and its Councillors and

when Exh. "Q" was written which appeared in Exh. "G" he vetted and approved it before it was sent to the Press.

Section 119 of the Freetown Municipality Ordinance (Cap. 65) reads:

> "No matter or thing done and no contract entered into by the Council, and no matter or thing done by any member or officer of the Council or other person whomsoever acting under the direction of the Council, shall, if the matter or thing were done or contract were entered into bona fide for the purpose of executing this Ordinance, subject any member or officer of the Council or any person acting under the direction of the Council personally to any action, liability, claim or demand whatsoever."

The section is wide and comprehensive and protects the Council and its staff acting within their sphere of influence. Exh. "Q" (letter written by defendant) was as already stated in evidence under the instruction of the then Mayor, head of the civic corporation.

In conclusion, plaintiff being unable to rebut the claim of justification, privilege, fair comment or the immunity under section 109 of Cap. 65 (Freetown Municipality Ordinance), the action fails and it is dismissed with costs.

[SUPREME COURT]

Freetown
Sept. 5, 1961
Luke Ag.J.

JACOB WILLIAMSON SAWYERR AND OTHERS . . . *Plaintiff*

v.

GEORGIANA LUCRETIA ROSE AND OTHERS, as Executors of the Estate of Ransolina P. Cromanty (decd.) . . . . *Defendants*

[C. C. 85B/58]

Real property—Will—Equity—Property dealt with by executrix as her own—Claim by persons beneficially interested—Rule against Perpetuities—Whether devise created estate tail—Statute of limitations—Status of property conveyed to third parties by executrix—Law Reform (Miscellaneous Provisions) Ordinance (Cap. 19 Laws of Sierra Leone, 1960) section 2 (3) (*b*).

Jacob Williamson Sawyerr, the testator, died in the Gold Coast (Ghana) in 1916. In his will, he left certain property in Freetown to his sister, Ransolina Patience Cromanty, two brothers and two daughters in equal shares. The will further provided: " . . . it is my express desire that these lands be not sold but that they must descend from children to children." Mrs. Cromanty, who was the only surviving executor, obtained probate of the will in the Gold Coast in 1916, but did not obtain probate in Sierra Leone. Returning to Sierra Leone, Mrs. Cromanty began to collect rents from the property, without accounting to anyone. In 1932, Mrs. Cromanty conveyed part of the property to one Joseph E. Metzger, and in 1953 she conveyed another part to two grand nieces.

Mrs. Cromanty died in 1957, leaving the remainder of the property to certain named persons. Her nephew and the grandchildren and great-grandchildren of the testator brought suit against the executors and trustees of her estate claiming a beneficial interest in the property.