

possession of the land in question at the undisclosed material time at which the alleged trespass took place. I feel that the judgment appealed from was right and would dismiss this appeal.

COLE, Ag. C.J. and DOVE-EDWIN, J.A. concurred.

Appeal dismissed.

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REGINA v. HOLLIST and BANGURA

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SUPREME COURT (Marcus-Jones, J.): December 21st, 1965
(Indictment No. 65/65)

[1] **Criminal Law—libel—writer disclaiming belief in statement—statement may still be defamatory:** A libellous statement may still be defamatory although accompanied by a statement of the writer's disbelief in its truth (page 298, lines 29-39).

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[2] **Tort—defamation—defamatory statements—writer disclaiming belief in statement—statement may still be defamatory:** See [1] above.

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The accused were charged with publishing a defamatory libel.

The libel was a newspaper editorial which contained statements the effect of which was that a brutal assault had been committed on certain supporters of the opposition party and the Prime Minister had authorised it. The editorial also contained the statement: "We do not believe this."

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The accused were each charged on two counts, the first alleging publication by despatching a copy of the newspaper signed by the second accused to the Ministry of Information and the second alleging publication by the sale of two copies of the newspaper to a prosecution witness.

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The first accused, the editor and proprietor of the newspaper, made the defence that he protested against the publication of the editorial and was overruled by a management committee which in fact controlled what was published, whereupon he left the newspaper office.

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The second accused, a financial controller of the newspaper, signed the copy sent to the Ministry of Information. Two other copies of the newspaper were sold to a prosecution witness at the newspaper office next day. The second accused's defence was justification and

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he also argued that the editorial merely called attention to dangers without imputing anything to the Prime Minister.

5 *B. Macaulay, Q.C., Att.-Gen., N. D. Tejan-Cole and Koroma* for the Crown. The accused were not represented.

MARCUS-JONES, J.:

10 Both accused are charged on two counts of publishing a defamatory libel concerning the Prime Minister of Sierra Leone, Sir Albert Margai, in the form of an editorial contained in the issue of November 20th, 1965 of the newspaper "We Yone." The first count consists in publication on November 21st by despatching a copy signed by the second accused to the Ministry of Information and the second count consists in publication on November 22nd, 1965 by the sale of two copies of the same issue to the fifth witness for the prosecution, Allie Sheriff, at the office of We Yone Press.

15 After several attempts by the second accused to unduly delay the proceedings, the case was proceeded with and concluded. The first accused elected to give evidence and called as his witness one Monty Cole. The second accused made a statement from the dock that he was not guilty and called one witness whose testimony related to a meeting held at the village of Mayayah in which he alleged he was arrested and beaten at the instance of the chief.

25 The second accused argued that the editorial taken as a whole was merely calling attention to dangers and not in any way imputing any impropriety on the part of the Prime Minister and, in short, that there was nothing in the publication libelling the Prime Minister. Taking the words complained of and reading the editorial as a whole, there is the patent imputation of authorising the commission of a crime, that is, assault on citizens of this country, by the Prime Minister. The words "We refuse to believe this" do not in any way remove the sting. Taking the editorial as a whole, it is saying that the Prime Minister authorised brutalities against eight men and three women who were supporters of the opposition party. It likened the atrocities to those perpetrated by Nazi Germany and went on to say that the party in power was intent on annihilating all opposition in order to foster its aims of a one party system. Without more this editorial is patently defamatory.

40 The first accused has given evidence that he did not authorise the publication and that he had protested at the publication of both

the editorial and the article "Where is the Prime Minister" and had been overruled by the committee of management which in fact controlled the article published to the exclusion of the editor's opinion. He retreated to Hastings Village with Monty Cole, a journalist and member of the management committee. Mr. Monty Cole stated on oath that after the first accused's advice against publication had been unheeded he advised the first accused to walk out of the paper and the first accused told him that he had already made up his mind to leave for Hastings. In my opinion the first accused is more of a fool than a defamer. But he has now been shocked into sensibility. He has now disclosed in evidence the policy of the paper and to all intents and purposes he no longer intends to carry other people's burdens. I believe him when he said on oath that he did not authorise the despatch of the copy signed by the second accused and that the publication was without his authority and this I find as a fact. I therefore find him not guilty on the first count.

As regards the second count, it seems clear to me that there was nothing in the first accused's power to prevent the sale to the fifth prosecution witness. It is true he did not withdraw his name from the proprietorship of the paper. He left me with the impression that he was labouring under great pressure. Sitting as judge alone, I have to approach this matter in a dual capacity, that of judge and jury. I therefore have to ask myself whether a jury sitting here and listening to the uncontradicted evidence of the first accused on oath would have convicted him on the second count. I come to the conclusion that they would not have done so having regard to the circumstances of the case. I therefore find him not guilty on the second count.

As regards the second accused, I find that he published the libel. I also find that he tried to justify it unsuccessfully. There is not a scintilla of evidence that the Prime Minister authorised or was a party in any form to any beatings whatsoever. I find the second accused guilty on the first count. As regards the second count, although there is evidence that he is financial controller that fact by itself does not make him a publisher to the fifth prosecution witness. I therefore find him not guilty on the second count.

*First accused acquitted on both counts;
second accused convicted on first count,
acquitted on second count.*