[SUPREME COURT]

Freetown
June 17,
1960

Marke J

I. T. A. WALLACE-JOHNSON . . . . . *Plaintiff*

v.

MORKEH YAMSON AND EDITOR AND PROPRIETORS OF "THE AFRICAN VANGUARD" . . . . . *Defendants*

[C. C. 396/57]

Tort—Libel—Defamatory meaning—Fair comment—Damages.

On September 17, 1957, an article appeared in "The African Vanguard" newspaper in which it was stated that the plaintiff, while at Huni Valley in Ghana, had made an appeal for funds to fight a pending lawsuit in which he was a party and that he was a rolling-stone-gather-no-moss politician, a great failure and an expert troublemaker. The plaintiff, who was a member of the House of Representatives and a journalist, brought suit for libel against the editor and proprietors of the newspaper. The editor filed a statement of defence in which he admitted having published the article in question. He further pleaded that the words complained of did not constitute a libel, justification and fair comment.

At the hearing, the editor did not appear and was not represented by counsel. The plaintiff denied that he had made an appeal for funds to fight a pending lawsuit while at Huni Valley. He further stated that as a result of the article his newspaper had suffered in its circulation and had been forced to suspend publication. He did not give evidence of pecuniary damage to him as a politician.

Held, for the plaintiff, (1) to write and publish of a man who is a member of the House of Representatives that he is a rolling-stone-gather-no-moss politician, a great failure and an expert troublemaker is capable of defamatory meaning.

(2) The words complained of bear a defamatory meaning.

(3) For the defence of fair comment to succeed, it must appear that the facts upon which the comment is made are true.

(4) Plaintiff can recover damages for injury to his reputation even though he did not give evidence of pecuniary damage to him as a politician.

Cases referred to: *Capital & Counties Bank* v. *Henty & Sons* (1882) 7 App.Cas. 741; *Lefroy* v. *Burnside* (*No. 2*) (1879) 4 L.R.Ir. 556; *Joynt* v. *Cycle Trade Publishing Co.* [1904] 2 K.B. 292.

E. Livesey Luke for the plaintiff.

No appearance for the defendants.

MARKE J. This is an action for libel brought against Morkeh Yamson, and an editor and the proprietors of "The African Vanguard" for an alleged libel published in an issue of the Vanguard newspaper dated September 17, 1957.

Appearance to this writ was entered for Morkeh Yamson, editor of "The African Vanguard"; but no appearance has been entered for the proprietors of that paper the other defendant.

The defendant in his statement of defence admitted that he was the editor and a proprietor of "The African Vanguard" and that he made or published the article complained of.

He further pleaded that the words complained of did not constitute a libel and in their natural and ordinary meanings were true in substance and in fact.

That the words were fair comment made in good faith or without malice on facts truly stated.

To that plea the plaintiff joined issue.

At the hearing the defendant did not appear and was not represented by counsel, though when this action was mentioned two days earlier, Mr. Garber deputised counsel for the defendant and was present when the date for the adjourned hearing was fixed.

The plaintiff in his evidence said that he was a member of the House of Representatives and a journalist and that he read the article, the subject of the action.

He denied that he was at Huni Valley in Ghana (then Gold Coast) and then made an appeal for funds to fight a pending lawsuit in which he was a party.

He denied that he ever aimed to be leader of a political party called the National Council, and that he was at any time a troublemaker.

He stated that he was never deported from the Gold Coast.

Further, that as a result of the article, the newspaper which he has had suffered in its circulation and has had to suspend its publication.

The first point for me to consider is whether the article complained of is capable of the defamatory meaning assigned to it. To write and publish of a man who is a member of the House of Representatives that he is a rolling-stone-gather-no-moss politician, he is a great failure and an expert troublemaker, is in my view capable of defamatory meaning.

Applying the test in *Capital & Counties Bank* v. *Henty & Sons* (1882) 7 App.Cas. 741, I feel that reasonable men to whom the publication was made would be likely to understand it in a libellous sense.

Having as a judge found that the words are reasonably capable of a defamatory meaning it is again for me sitting also as the jury to say whether in the circumstances of the case they in fact bear such meaning.

Reference to the plaintiff as a rolling-stone politician would in my opinion make a jury consider him as a man who was unstable in his political views and who could not be considered as a person who would always stick to the views he holds. To my mind to say of a politician that he is a troublemaker is one of the gravest imputations that could be made of any man in politics. It is not always that a politician will succeed in converting every one of the majority of people to his views, but to say that he is a troublemaker suggests such insincerity in the views he propounds as to make him a really dangerous person in any community; that is a person who does not seek to promote the peace and well-being of the society in which he lives but who is on the contrary busy hatching plots that will create almost chaos and confusion in an otherwise happy and peaceful community.

In the circumstances of this case I hold that the words complained of bear a defamatory meaning.

On the question of damages the plaintiff has given evidence only of how the publication has affected his newspaper. That to my mind is not sufficient.

The libel was directed not to the plaintiff as the editor of a newspaper, or about his newspaper, but to the plaintiff as a politician.

The defendant, however, after pleading justification and fair comment, has not appeared before this court and has not given evidence. I am therefore left with the evidence of the plaintiff and his witness. Though the plea of justification is in itself a dangerous plea where the justification is not proved it becomes in my opinion all the more dangerous where a defendant merely pleaded it in his statement of defence and avoids even attempting to prove what he has pleaded.

Again the defendant has pleaded fair comment made in good faith and without malice; and in the absence of the defendant from the witness-box it is impossible for me to say whether the defendant himself believed in what he said of the plaintiff. The plaintiff has given evidence that the comment about the reference to Huni Valley was untrue. In the absence of any rebutting evidence I have to accept that. It has clearly been held that comment must be on a matter of fact. It assumes that the matter of fact commented upon to be somehow or other ascertained. It does not mean, as was held in *Lefroy* v. *Burnside* (*No. 2*) (1879) 4 L.R.Ir. 556, as quoted in Fraser on Libel and Slander, 7th ed., at p. 110,

> " that a man may invent facts, and comment on the facts so invented in what would be a fair and bona fide manner on the supposition that the facts were true. . . . If the facts as a comment upon which the publication is sought to be excused do not exist, the foundation of the plea fails."

And, as was said in *Joynt* v. *Cycle Trade Publishing Co.* [1904] 2 K.B. 292 at 294, the comment

> " must not misstate facts because a comment cannot be fair which is built upon facts which are not truly stated, and, further, it must not convey imputations of an evil sort except so far as the facts truly stated warrant the imputation."

For a defendant to have made such pleas which he had not attempted to prove must in my opinion inure unfavourably to the conduct of the defendant in these proceedings. I feel I am justified in taking judicial notice of the fact that as the plaintiff is a member of the House of Representatives, he must have been sent there by the votes of those who did not consider him a troublemaker or a rolling-stone politician.

Taking all the circumstances of this case into consideration and even though the plaintiff has not given evidence of pecuniary damage to him as a politician I feel he has suffered in his reputation and has been injured in the eye of those he represents in the House, and assess the damages at five hundred pounds (£500).

There will be judgment for the plaintiff for £500 with costs.

Costs to be taxed.
