Judgment Book.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1975/C 044

BETWEEN	HOPETON CAVEN	PLAINTIFF
A N D	THE GLEANER COMPANY LIMITED	DEFENDANT

D. M. Muirhead Q.C. and Dr. A. Edwards instructed by Jerome Lee of Hew and Bell for Plaintiff.

R. Williams Q.C. instructed by R. Ashenheim of Milholland Ashenheim and Stone for Defendant.

Heard: 1979, January 22, 23, 24, 25, 26
July 30, December 13.

JUDGMENT

CAMPBELL J.

The plaintiff in this action claims damages from the defendant for a libellous publication captioned "Munroe assigns blame" appearing in the latter's newspaper "The Daily Gleaner" dated December 16, 1974.

The plaintiff at the time of the publication, and for many years prior thereto, was an eminent Trade Union Leader. He was the General Secretary of the Trade Union Congress a duly registered Trade Union under the Laws of Jamaica. As General Secretary of the Trade Union Congress, he was its chief negotiator and spokesman. In that capacity, he represented numerous organisations of workers in several parts of the island. He has also attended Labour conferences abroad as the representative of the Trade Union Congress from as far back as 1956. He represented the Trade Union Congress on the Joint Industrial Councils for the port of Kingston and for the Building Industry.

Not only was the plaintiff an eminent Trade Unionist, widely known throughout Jamaica as such, he also was a well known political figure in the political life of Jamaica. He had been for some 9 to 10 years prior to 1974 a member of the executive of the People's

National Party which is one of the two main political parties in Jamaica. He was also an activist in the said party speaking at public meetings and organising groups in promotion of the party's objectives. He actually stood for election to Parliament as a candidate of the party in 1967 albeit unsuccessfully. In recogntion of his public stature he was appointed a Senator by the Government formed by the People's National Party in 1972 and in that capacity represented Jamaica at a Commonwealth Parliamentary Conference in London in 1973. He is still a Senator.

Dr. Trevor Munroe, who is the person mentioned in the caption "Munroe assigns blame", is on the admission of the plaintiff in his evidence, and as appears from the exhibits tendered in evidence by consent, a well known lecturer at the University of the West Indies. He also became well known for his Trade Union activities. He was the first Vice-President of the University and Allied Workers Union (hereinafter referred to as the U.A.W.U.) a duly registered Trade Union under the Laws of Jamaica.

In or about 1971, he had organised the hourly paid workers at the University into the U.A.W.U. He was also a budding political figure propagating an ideology based on Marxist Leninist teachings.

About the end of November, 1974, there was a strike among the Port Workers of the Port of Kingston over their claim for payment to them of interest accrued on their Superannuation Fund Investment.

Consequent on the stand taken in the matter by the Bustamante Industrial Trade Union, the National Workers Union, the Trade Union Congress and the United Port Workers Union, who together then represented the workers, that the payment could not lawfully be made, the workers appeared to have become disenchanted with their respective Unions. Some of the workers sought the assistance of Dr. Trevor Munroe and his Union which they conceived would give them better representation than their existing Unions. Dr. Munroe in these circumstances mounted an enrolment drive for his Union. It was at a meeting for this purpose held on December 6, 1974, that there was a vicious physical attack on

him resulting in his receiving wounds to his head, back and arms.

The response of the public to this attack was spontaneous. It was equally intense and unanimous in its condemnation of the incident. The Prime Minister, on behalf of the government and himself, deplored the attack and assured the public that the Commissioner of Police had immediately ordered a maximum investigation. The B.I.T.U., N.W.U. and the T.U.C. each issued a statement condemning the incident in such graphic expressions as "the brutal and vicious attack", "a blot on Trade Unionism in Jamaica", "senseless and vicious attack", and "a foul deed". Organisations like the Human Rights Council and Columnists like Malcolm Sharpe joined in the condemnation. The latter writing under the caption "Black Friday" in condemning the attack described it as a "premeditated attempt to kill or maim a Trade Union Leader". He went on to describe the attack as an instance of "Planned political violence" because Dr. Trevor Munroe has "deliberately placed himself on the outside of our conventional politics and has clearly questioned the motives of nearly every leader in this society".

The defendant in its newspaper publications between the 7th, December, 1974, and 16th December, 1974 gave great prominence to all the reports, statements, and comments on the incident. In one of its publications on December 9, 1974 it carried in the centre of a page surrounded by statements of the B.I.T.U., N.W.U. and T.U.C., a statement of Dr. Munroe in which he described the attack on him as "deliberate and organised". He is reported as mildly castigating the Prime Minister because in his view the latter had not "referred to the involvement of party political leaders and hirelings in the attack".

On Saturday December 14, 1974 there appeared in the defendant's newspaper a pictorial advertisement captioned "The working class must Rule". It proclaimed the holding of the second annual Congress of the U. A. W. U. on December 15, 1974 at the Dramatic Arts Theatre, U. W. I. It further proclaimed that the

Against this background, the issues raised for determination are as set out hereunder namely:-

(a) Was the meeting the report of the proceedings of which is in question a public meeting?

(b) If it was, was the report of the proceedings thereof a fair and accurate report?

(c) If the meeting was a public meeting and the report was a fair and accurate one, was the publication thereof on a matter of public concern?

(d) Was the publication for the public benefit?

Was the meeting a public meeting? In resolving this issue the subsidiary issue, namely, whether the objective of the meeting was for the furtherrance or discussion of a matter of public concern, will necessarily have to be determined inasmuch as its determination in the affirmative is a condition precedent to a finding in the affirmative that the meeting was a public meeting as defined in the scehdule to the Act.

Exhibit 2 admitted in evidence by consent, advertised on December 14, 1974, the holding of the second annual Congress on the U.A.W.U. on December 15, 1974, at the Dramatic Arts Theatre, U.W.I. This U.A.W.U. on the admission by the plaintiff in paragraph 2 of his statement of claim in suit C.L. 1975/C 043 intituled Hopeton Caven (Plaintiff) and Dr. Trevor Munroe (Defendant) is a duly registered Trade Union under the Laws of Jamaica and Dr. Trevor Munroe is the first Vice-President thereof.

It may reasonably be inferred that the University of the West Indies, on whose premises the meeting was advertised to be held, had knowledge of the said proposed meeting. The fact that the meeting was subsequently held apparently with no show of resistance or objection by the U.W.I. is evidence from which I can infer consent on its part to the holding of the said meeting and I so find as a fact. The meeting was that of a registered Trade Union. It was described as the "Second Annual Congress". It indicated that it would be in two sessions, a private session for the members only and a public session at which all are invited. The advertisement bore the bold caption

public session of the Congress would be at 1 p.m. and that all were invited. This is evidenced by Exhibit 2 admitted by consent in evidence.

The second annual Congress of the U.A.W.U. was duly held and at the public session thereof, attended by members of the public, representatives of the news media, dignitaries from abroad, Dr. Trevor Munroe, in reporting on the attack on him on December 6, 1974, uttered words of and concerning the plaintiff which were undoubtedly libellous.

The defendant published a report of what Dr. Munroe said of the plaintiff at this public session and in consequence has been sued for libel.

It is admitted that the defendant expressed its willingness to publish a reasonable statement by way of explanation and or contradiction if so desired by the plaintiff pursuant to section 9 subsection (2) of the Defamation Act. The plaintiff declined and or neglected to avail himself of this offer. The defendant is accordingly not precluded from setting up the statutory defence of qualified privilege under Section 9 of the Act and the schedule thereto as pleaded. The defendant will succeed or fail on this defence according as its conduct in publishing the report is or is not within the ambit of Section 9 of the Act and the schedule thereto with together read as follows:-

> "Section 9 (1) - subject to the provisions of this section, the publication in a newspaper of any such report ..... as is mentioned in the schedule shall be privileged, unless the publication is proved to be made with malice.
>
> "Section 9(3) - nothing in this section shall be construed as protecting the publication of any matter the publication of which is prohibited by law or of any matter which is not of public concern and the publication of which is not for the public benefit."
>
> "Part 3 paragraph 2 of schedule
>
> A fair and accurate report of the proceedings at any public meeting held in this island, that is to say a meeting bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern whether admission to the meeting is general or restricted."

"The working class must Rule". It would not in my view, be unreasonable or far-fetched to infer from this caption that apart from the usual consideration of and report on elections of Union officials, policy statements, strategies and finances the U.A.W.U. would most likely at this congress publicly enunciate a philosophy of political power for the workers more radical than is usually enunciated in the key-note addresses of leaders of other Trade Unions at their annual congresses. The holding of annual meetings described as congresses by Trade Unions in Jamaica is in any case recognized and accepted as an integral part of Trade Union activities even if no current burning topic is scheduled for discussion. Even at the normal "run of the mill" annual congresses it would not be unusual for discussions to centre on reports of Trade Union activities in retrospect, problems facing Trade Union including for example management resistance to unionization of employees or competition from other unions for the confidences and votes of the workers. These all relate to matters essentially of public concern. The whole concept of Trade Unionism is that it is fundamental to industrial peace in the country. Trade Unionism promotes the unimpeded flow of economic goods and services. It promotes the maintenance of a work force operating in harmony with management. In total, Trade Union activities are undoubtedly matters of public concern. The evidence of Balfour Henry for the defendant on the issue whether the second Congress was a public meeting is paraphrased as hereunder:-

> "I covered the public session of that Congress on instruction of the News Editor. I attended the Arts Centre to cover the session. I covered the whole of the public sessions. The public session was a public meeting as advertised. Some members of the public were there, also other representatives of the press. The public session followed a course similar to the public sessions of other unions. The purpose of the meeting was to explain policies and programmes of the union.....Dr. Munroe spoke, he gave an important address."

I find as a fact that the second Congress of the U.A.W.U. held on December 15, 1974, was a public meeting bona fide and lawfully held for a lawful purpose and for the discussion of matters of public concern namely, trade union matters in the widest sense.

Was the published report a fair and accurate report of the proceedings at this public meeting?

The submission in substance of Mr. Muirhead and the cases cited as persuasive authority in support thereof is that the report was not a fair and accurate report of the proceedings. Even if the "faded recollections" of Balfour Henry of what took place at the meeting is accepted, the report would not be fair and accurate because Balfour Henry in his evidence stated that the object of the public session was to explain the policy and programme of the union and this was never published. The impugned report was irrelevant to the purpose of the meeting. Alternatively, he submits there is no material before the Court as to what transpired at the meeting so to enable the Court to determine whether within the context of what transpired at the meeting, the report was a fair and accurate one in substance. Section 9 of the Defamation Act, he contends, envisages a fair and accurate report of the whole meeting or substantially the whole meeting. There is no evidence from which it can be reasonably inferred that the report satisfied this test of substantiality.

The defendant he says has failed to adduce any or any sufficient evidence to discharge the burden lying on it in relation to this issue.

Mr. Williams for the defendant conceded that the burden was on the defendant to establish that the report complained of was a fair and accurate report of the proceedings at a public meeting. He submitted however that this burden had been discharged because:-

(a) Contrary to the submission of Mr. Muirhead it is not necessary for the whole of the proceedings nor even for substantially the whole of the proceedings to be reported in order that a defence may be established under Section 9 of the Defamation Act.

What Section 9 of the Act and paragraph 11 of the schedule thereto contemplate is that the report complained of must be in respect of an event which the defendant asserts as having taken place in the course of the proceedings at the public meeting. It is this event which when reported should be described either in the exact manner in which it took place using the exact words spoken where the spoken words constitute or substantially constitute the event or alternatively be described in a manner which is substantially accurate.

(b) Though there is no transcript of the speech made by Dr. Munroe, the defendant adduced evidence namely the recollection of Balfour Henry of what was said by Dr. Munroe and this has been substantially confirmed by the plaintiff under cross-examination in relation to a video tape film of the meeting which was not produced in evidence. The defendant is entitled in discharging the burden on it to rely on evidence elicited from the plaintiff.

In considering the issue whether the report is fair and accurate I start from the premise that in construing Section 4 of the Law of Libel Amendment Act, 1888, (U.K. legislation) in respect to which Section 9 of our Defamation Act is substantially in pari materia, it has been firmly established in decisions of the English Court relating to reports of judicial proceedings that a report may still be a fair and accurate report even though it is an abridged or condensed report provided it gives a correct and just impression of what took place at the meeting. If it is substantially a fair and accurate report albeit abridged or condensed it will be protected by qualified privilege under the Act. A similar principle is applicable to reports of the proceedings at public meetings. There is no justifiable reason why any dissimilar principle should be applicable.

A related issue which calls for determination is whether in order to establish a defence under the Act, it is necessary for the whole proceedings, or substantially the whole proceedings, verbatim, or in an abridged form, to be reported. In other words is the defence under the Act lost if only one event constituted in the proceedings of the meeting is reported where this event is relevant and germane to or is an integral part of the object or purpose of the meeting and is not a mere irrelevant event?

In determining whether a report of judicial proceedings is fair and accurate, or substantially so, one of the determinants is whether the report is substantially of all facets of the proceedings. It has however never been held that for the report to be privileged it must be a report of all facets of the proceedings. In other words it has never been held that merely because only one incident in the proceedings has been reported this per se is a bar

to the setting up of the defence under the Act. What the decided cases in the Courts in England have established is that the report of one event only of the proceedings will be struck down as partial and inaccurate only if by omitting to report on more or all of the other event, a false, incorrect, or unjust impression is conveyed by what is actually reported. If what is reported constitutes an event the fairness and accuracy of which is not dependent on the report of any other event constituted in the proceedings, it is still privileged under the Act notwithstanding that the other events are not reported provided it is a fair and accurate report of the event in question. The position in the case of reports of proceedings in Courts of Justice is succinctly stated by Lord Campbell C.J. in Lewis v. Levy (1858) E.B. & E at page 353 in these words:-

> "The privilege - a valuable privilege for the public - of publishing reports of proceedings in Courts of Justice would be useless if it were necessary to set out every word of the evidence and of the speeches and of what was said by the judge-..... that is not necessary; if what is stated is substantially a fair account of what took place, there is an entire immunity for those who publish it".

I respectfully endorse the principle enunciated in that case and further say that it is equally applicable to reports of proceedings at public meetings. I hold that it is not necessary that all the varied matters which may have been considered at, or in respect to which speeches may have been made at public meetings need be reported provided that the omission to report on all the varied matters do not render unfair and inaccurate the report on the particular incident which is alleged to constitute the libel.

In the present case a part only of the speech of Dr. Munroe was published in an abridged or condensed form. What was published related to what he allegedly said as to who his attackers were and or who organized the attack. The determination of the issue whether the speech as reported was a fair and accurate report of what he said does not depend on the publication of other matters which took place at the meeting. The report as published is

accordingly not struck down as unfair and inaccurate on the ground that there was not published with it other matters which took place and which constituted with the speech, the proceedings at the meeting. On another ground it seems to me that Section 4(b) of the Interpretation Act could be prayed in aid to support the construction that proceedings include "an event" in the proceedings.

Was the report as published a fair and accurate report of what Dr. Munroe said in that part of his speech in which the plaintiff was libelled?

The video tape film of the meetings was not adduced in evidence, nor was there any transcript of the exact speech. What was adduced in evidence was a recollection by Balfour Henry who covered the meeting at which Dr. Munroe spoke. On being shown the article in Exhibit 1 captioned "Munroe assigns blame" he said:-

> "I recognize the report as mine. Apart from the headline the report is as I had submitted it. It is a fair report of what Dr. Munroe had said about the matter contained in the report. It is an accurate report of what Dr. Munroe said. Dr. Munroe said other things which were not reported. I picked out what I considered important as being current namely on the question of who wounded him. This I do when there is not space for a full report of all things".

There was also admitted in evidence as Exhibit 4 the statement of claim of the plaintiff in the companion suit namely, C.L. 1975/C 043 which he prosecuted against Dr. Trevor Munroe as defendant.

In paragraph 8 of this statement of claim the plaintiff set out the words which Dr. Munroe spoke and published of and concerning him at the meeting. In paragraph 10 of the said statement of claim the plaintiff averred that "the said words in part, or a report thereof were in fact repeated and published in the Daily Gleaner newspaper on Monday 16th December, 1974, under the heading "Munroe assigns blame".

The report in the Daily Gleaner which is the subject matter of the present suit is in identical terms with the report mentioned in paragraph 10 of the statement of claim in suit C.L. 1975/C 043

which on the admission of the plaintiff in that suit was a report of the speech which he in paragraph 8 of the said statement of claim admitted as having been made by Dr. Trevor Munroe. A comparison of the speech which the plaintiff admitted was made by Dr. Munroe with the published report thereon both in the present suit as well as in suit C.L. 1975/C 043 reveals that the published report contains substantially what was said in the speech. I accordingly, for the reasons given, find as a fact that the publication under the caption "Munroe assigns blame" was a fair and accurate report of the speech of Dr. Trevor Munroe which speech constituted an integral part of the proceedings at the public meeting.

Was the publication of the speech a publication on a matter of public concern?

I have already considered the question of public concern when determining that the meeting satisfied the criteria of a public meeting. I found that the meeting was for the discussion of Trade Union matter in its widest sense.

Discussions on impediments or obstacles in the way of Trade Union activities including attacks on its accredited leaders in their campaign to enrol members are as much matters of public concern as the delivery of key-note addresses and the enunciation of policies, programmes and strategies at meetings convened by Trade Unions. In the case here being considered the attack on Dr. Trevor Munroe was not in relation to some purely domestic matter it was an attack on him in his capacity as Vice-President of the U.A.W.U. lawfully engaged in a membership drive for his Union. The physical attack on him while so engaged was eminently a Trade Union matter and was a matter of public concern. Indeed the spontaneous, intense and widespread condemnation by the public of the attack is testimony enough that the matter was viewed by the public as of grave concern to them. A maximum police investigation had been mounted so that the person or persons responsible for the attack would be brought to justice. It would be taking a very narrow and oblique view of

"public concern" to say that while the public expressed concern about the attack on Dr. Munroe they would not be concerned to know who the attacker was so that he could be dealt with accordingly to law.

Viewed in this manner, the answer to the question whether the publication of the speech was a publication on a matter of public concern must be answered in the affirmative. It was a continuation so to speak of the debate and commentary which had preoccupied the public since December 7, 1974, on which debates and commentaries the defendant had fully informed the public up to and including the publication which has landed it in Court.

Was the publication for the public benefit? The evidence of Mr. Neita is that in so far as politics is concerned any Senator is newsworthy. He further stated that he considered it was of the utmost public benefit that Dr. Munroe's accusation should be carried as he made it. He authorized the publication for the benefit of all Jamaicans so that they would know who Dr. Munroe said was his attackers. The publication was to inform the public of the allegations made by Dr. Munroe.

Is Mr. Neita's assessment of "public benefit" in these circumstances correct? I am clearly of the view that he is correct in his assessment. In determining whether the matter published was for the public benefit the subject matter is no doubt of paramount importance, equally so are the personalities involved. Mr. Justice Slesser L.J. in Normanville v. Hereford Times Limited; The Times May 20, 1936, C.A. in formulating his view of public benefit said:-

> "It must obviously be for the public benefit in a democratic country that discussions, arguments and criticisms whereby popular government was carried on should be brought to the attention of the electors and citizens".

I am in entire agreement with this statement. I would by analogous reasoning say that where in a democratic society, Trade Unions are legally recognized as the medium through which the economic and social welfare of the workers are protected and advanced,

and through this industrial peace is promoted, the activities of such Trade Unions, and of their accredited leaders in relation to such activities, are matters the publication of which are eminently for the public benefit. If a trade union leader publicly accuses another trade union leader of corrupt practices in competing for the votes of the workers in industry, or if a trade union leader publicly accuses another trade union leader of adopting strong arm tactics (whether amounting to a crime or not) in seeking to muscle out the former from spheres of influence in the labour field claimed by the latter, these are all matters the publication of which is for the public benefit. It must undoubtedly be to the benefit of the public that they should know, having regard to the conduct and public utterances of trade union leaders in relation to and concerning other such trade union leaders whether the latter should be trusted, or whether the former by their rash conduct and or rash public utterances have exhibited that sense of responsibility, that calmness, that penchant for truth, integrity and honesty to warrant their being entrusted with the attainment of the economic welfare of those whom they seek to represent. The public undoubtedly derives a benefit from being supplied with all such information which enables them properly and wisely to exercise their right of choice as between competing parties for their confidence and vote.

The case of Sharman v. Merritt (1916) 32 T.L.R. 360 cited by Mr. R. Williams is in my view more apposite to the situation here than the cases cited by Mr. Muirhead namely Pankhurst v. Sowler (1887) 3 T.L.R. 193; Kelly v. O'Malley and Ors. (1889) 6 T.L.R. page 62 and Ponsford v. Financial Times Limited & Hart (1900) 16 T.L.R. page 248. In Kelly v. O'Malley for instance, both the plaintiff who alleged he was libelled by what was spoken at the meeting and the defendants who spoke the words were lowly placed in status, the plaintiff was a labourer the defendants included a stevedore and a cooper.

It could not on the most charitable view of the matter be said that what the defendants said of the plaintiff could conceivably be a matter the publication of which was for the public benefit. The words of the learned trial judge in posing the question for consideration of the jury were aptly put as hereuner:-

> "Was this a fair and accurate report; and even if so, could anyone say that these miserable personalities had anything whatever to do with public interest or benefit?"

However in the case of Sharman v. Merritt the defendant newspaper published the contents of a report contained in the agenda for a meeting of a corporation. The report was adopted without being read or discussed. It was of a sub-committee of the corporation and referred to the plaintiff in his capacity as a Superintendent of the corporation's cemetery.

Mr. Justice Sherman held that a matter relating to the manager of a public cemetery was a matter of public concern. He held further, after considering Pankhurst v. Sowler, that sitting as a jury to consider whether the publication was for the public benefit, he was of the view that it was for the public benefit. He expressed the view that the intention of the statute (S4 of the Law of Libel Amendment Act, 1888) was to protect newspaper which honestly and without malice reported what happened at a public meeting. To hold that the publication was not for the public benefit would be opined place an intolerable burden upon reporters at public meetings and would be laying pitfalls for them and would help to fritter away the privilege which he was sure the statute intended to give.

With this view I am in entire agreement and would respectfully adopt the same mutatis mutandis in determining the issue whether the publication in the instant case was for the public benefit.

The last issue which calls for determination is whether the publication was made without malice.

Lord Campbell C.J. in Dickson v. Wilton (1859) (1 F & F) page 427 defines malice as "any indirect motive other than a sense of duty". The motive of the defendant in publishing the report is

accordingly the true test of liability. The motive, in the circumstance of this case must be a bona fide desire and intention to give information to the public on a matter which the defendant genuinely considers is for their public benefit.

In Clark v. Molyneux (1877) 3 Q.B.D. Brett L.J. at page 247 stated that:-

> "If a man is proved to have stated that which he knew to be false, no one need inquire further. Everybody assumes thenceforth that he was malicious, that he did a wrong thing from some wrong motive".

The application of this principle would appear at first sight to conclude the matter adversely to the defendant because Mr. Clifton Neita the managing editor of the defendant under cross-examination admitted that he did not believe the allegation of Dr. Munroe. This is almost tantamount to saying he knew that what Dr. Munroe said was false. However the principle above stated in relation to a newspaper report has in my view to be applied differently. The matter is not determined by ascertaining whether or not the reporter had knowledge of the falsity of the charge or accusation made by the person whose utterance he has reported but rather by ascertaining whether or not he knew that what he reported was false in the restricted sense that the utterance was never made or was made in a manner substantially different to the form in which it was reported. This view of the matter is epitomized in the words of a Learned judge when he said "The privilege would be illusory and worthless if notwithstanding the proof of the occasion the defendant was obliged to prove his belief in the truth of the communication - see Todd v. Dun (1887) 15 Ontario App. R. page 99.

A similar view is expressed in Gatley on Libel and Slander (6th edition) page 355 paragraph 768 in these words:-

> "But there may be occasions when it is the defendant's duty to make a statement without believing it to be true or even knowing the imputation it conveys to be untrue. If for instance, it is his legal social or moral duty to report some other person's statement or a rumour regardless of its truth or falsity, he cannot be malicious merely because he does not believe that statement or rumour to be true or because he knows it to be false".

The object of attaching qualified privilege to a fair and accurate report of proceedings at a public meeting is the information of the public. If therefore the status of the report, having regard to its subject matter and or the persons relevantly linked therewith is such that it is fit for the information of the public in the sense that its publication is for the public benefit then privilege attaches once the predominant motive of the publication is the information of the public.

Learned Counsel for the plaintiff sought to elicit from Mr. Neita an admission that his motive in publishing the report was not for the information of the public but rather to focus police investigation on the plaintiff. Mr. Neita vehemently refuted this in these words:-

> "The publication was not designed to influence police investigations, they could take congnizance of it but that was not the purpose of the publication but rather to inform the public of the allegation made by Dr. Munroe".

He further refuted the suggestion that by naming the plaintiff in the report, malice could be inferred. On this aspect of the matter Mr. Neita said".

> "A report that does not mention Caven by name could well be unfair".

Throughout his evidence, Mr. Neita maintained that though he did not consider Caven as a thug, though he was friendly with him, he had a duty to perform. Though he did not believe the allegation of Dr. Munroe he had a clear duty to publish, his belief in the matter did not matter. He published for the benefit of all Jamaicans.

In the United States of America, the Supreme Court in refusing to review a lower court's dismissal of libel actions against The New York Times and an Audubon Society Official in 1977, enunciated the principle that a newspaper is free to print neutral account of unproved charges against public figures in newsworthy controversies without fear of actions for libel even though the paper may have serious doubts that the accusations are true. In refusing to review

the lower court's dismissal of the libel suits the Supreme Court is reputed to have delivered itself in these words:

> "If we are to enjoy the blessings of a robust and unintimidated press, we must provide immunity for defamation suits where the journalist believes, reasonably and in good faith, that his report accurately conveys the charges made".

The approach of the Supreme Court in the U.S.A. in my opinion accords with the true spirit and intendment of Section 9 of our Defamation Act. In this regard I do not think that the words coming from the lips of Lord Diplock in Horrocks v. Lowe (1974) (H.L.)(1) A.E.R. page 662 at page 669 sounded any discordant note. At page 669 he said and I quote:

> "So, the motive with which the defendant on a privileged occasion made a statement defamatory of the plaintiff becomes crucial. The protection might, however, be illusory if the onus lay on him to prove that he was actuated solely by a sense of the relevant duty or a desire to protect the relevant interest. So he is entitled to be protected by the privilege unless, some other dominant and improper motive on his part is proved. "Express malice" is the term of art descriptive of such a motive .....
>
> The motive with which a person published defamatory matter can only be inferred from what he did or said or knew. If it be proved that he did not believe that what he published was true this is generally conclusive evidence of express malice for no sense of duty or desire to protect his own legitimate interests can justify a man in telling deliberate and injurious falsehoods about another, save in the exceptional case where a person may be under a duty to pass on, without endorsing defamatory reports made by some other person".

In the present case we are dealing with an exceptional case where the defendant actuated by the paramount and predominant motive of giving information to the public in discharge of a duty at least moral, has passed on without endorsing a defamatory report made by Dr. Munroe. Its knowledge of the falsity of the report is not evidence of malice and as the plaintiff has failed totally to establsih any improper or indirect motive for the publication he has failed to establish malice in the defendant.

For the reasons given in relation to the determination of each of the issues posed for determination I find that the defendant

is entitled to the protection of Section 9 of the Defamation Act as pleaded.

Accordingly there will be judgment for the defendant dismissing the plaintiff's claim with costs to be paid by the plaintiff the same to be agreed or taxed.

Ga