

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. F127 of 1978

BETWEEN	Earl Foster	Plaintiff
A N D	Desmond Wallen The Daily News Ltd.	Defendants

Heard: June 2, 3, 4, 5 & 6, 1980

Burnham Scott, Q.C. and H. Haughton Gayle for the plaintiff;

Derek Jones and John Graham for the defendants.

September 18, 1980

Parnell, J.

In this action the plaintiff claims damages for libel allegedly contained in a front page report written by the first defendant and published in the Jamaica Daily News of Saturday, October 28, 1978. The second defendant is the registered proprietor and publisher of the Jamaica Daily News.

At the trial, the plaintiff alone gave evidence in support of his claim. No witness was called by the defence. The defendants have relied on the facts of the plaintiff's own case. And in brief, the defendants have maintained the following:

- (1) That while admitting that the report was written and published as alleged, there is a denial that the words were written and published falsely or maliciously of the plaintiff;
- (2) That the words set out in the statement of claim are, in their natural and ordinary meaning, true in substance and in fact;
- (3) There is a denial that the words complained of bear or were understood to bear or are capable of bearing any defamatory meaning of and concerning the plaintiff;

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- (4) That the words are a fair comment made in good faith and without malice on a matter of public interest.

The defendants have taken a bold stand under the banner of freedom of expression and have anchored their defence under alternatives in their pleading.

Retiring sexagenarian complains

The plaintiff was, at the material time, the Chief Public Health Inspector employed to the Kingston and St. Andrew Corporation. Aged 63, he has given over 40 years of public service in the Health Department. During this period of long and devoted service he won several encomiums from the Corporation and from the Municipal Services Commission. The plaintiff attained the retired age of 60 on July 4, 1977 but was requested by the Municipal Services Commission to continue his services until October 31, 1978. He did not proceed on pre-retirement leave on November 1, 1978. By this date an incident had been brought to light which involved his department. It seems that prudence had dictated that while an investigation and a public inquiry - to which I shall refer later - were pending, he as the Chief should be readily available to give what assistance was thought necessary.

On the 4th June, (the 3rd day of the trial), in answer to the Court, the plaintiff had this to say:

"I am still held in high esteem by the Senior Medical Officer; the K.S.A.C. and the Municipal Services Commission. My conduct in the investigation of the affair is above board."

Background to publication

Food which was unfit for human consumption, was found at 2, Willow Run, Stony Hill, St. Andrew at the warehouses of Mr. F. Alexander. This condemned food including flour, mackerel, rice, sugar and milk powder (among others) found itself in the hands of avid higglers. And these higglers sold the scarce articles to the public for human consumption.

At a Public Health Committee meeting held on September 18, 1978, the Councillor for the Stony Hill Division brought the matter to the attention of the Committee. To pass on food to the public as wholesome

that which has in fact been condemned for human consumption is a serious matter. The health and the well being of consumers are matters of great public importance. To imperil the health of the buying public with food which is unfit for human consumption and which is known to be unfit is a step which calls for careful and drastic action designed to arrest the mischief and to identify and punish those who are guilty of this nefarious deed.

Councillor handed in a report

At the meeting of the Public Health Committee on September 18, Councillor Seymour of the Stony Hill Division handed in his own report. From the evidence of the plaintiff, it seems that the executive of the K.S.A.C. took quick action. But whether the implementation of the executive action was effective is questionable. I shall deal with this aspect of the matter in due course. The following steps were taken:

- (1) His Worship the Mayor directed the plaintiff to prepare a report touching the circumstances relating to the seizure of condemned food effected at 2, Willow Run, Stony Hill;
- (2) The plaintiff instructed the Deputy Chief Public Health Inspector (Mr. F. D. Townsend) on September 19, to prepare a report. Mr. Townsend was specifically in charge of the Food Section of the department. This was not part of the duty of the Deputy Chief. But a situation had arisen, which I shall outline hereafter, resulting in this arrangement being made. The immediate Food Section inspection and control was normally assigned to a Public Health Inspector, Grade 4.
- (3) About one week after the plaintiff had given the instructions, Mr. Townsend submitted a report in writing.
- (4) On the 6th October, 1978, the plaintiff submitted his report to the Town Clerk. This was forwarded by the Senior Medical Officer who is the head of the Health Department.

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On the 22nd September, the plaintiff gave certain directions to the Deputy Chief, designed to effect a change in the administrative personnel of the Food Section. The minute signed by the plaintiff and dated 22nd September, 1978, states as follows:

"Mr. F. D. Townsend, Dep. C.P.H.I.,

Mr. Robinson, acting Senior Public Health Inspector, Grade I, has resumed his duties with effect on 7/9/78.

Kindly make the necessary arrangements for him to assume the duties of the supervision of the Food Section as early as possible thus relieving Mr. Blake and yourself of the direct responsibility in this respect."

Unsatisfactory operation of Food  
Section at Waterfront

According to the plaintiff, he had observed certain unsatisfactory arrangements with regard to the operation of the Food Section. As a result he had made a report on the subject to the Senior Medical Officer before he gave his directive abovementioned.

His report to the Senior Medical Officer is dated July 31, 1978.

The last two paragraphs of his report read as follows:

" I should mention that the present temporary arrangement in which Mr. F. D. Townsend, Deputy Chief Public Health Inspector has undertaken the supervision of the Food Section is not working satisfactorily and may be due to the work-load of his substantive position.

It is therefore in the interest of the Service that I strongly recommend that Mr. R. Robinson, acting Senior Public Health Inspector, Grade I, be assigned to his appropriate duties as was the original arrangement."

What is a little strange however, is that although the plaintiff knew that having Mr. Townsend to supervise the Food Section was not working satisfactorily, it was about 3 weeks after his report to the Senior Medical Officer, to wit, on September 22, that he took positive action in writing to effect some amelioration in the cause. The 22nd September, 1978, was on a Friday and the report of the Stony Hill Councillor concerning the "Willow Run Affair" was presented on the Monday of the same week. Was it

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a mere coincidence that this positive action was taken after the discovery of the Willow Run incident or was it mere neglect or incompetence why there was this delay? Or could there be another reason? Mr. Townsend was directed by the plaintiff on September 19 to prepare a report touching the affair. It was a matter of urgency. The Mayor was anxious to know the facts. Relieving Mr. Townsend of his temporary responsibility for the Food Section would give him more time to prepare the report. But if incompetence, lassitude or some fault was to be imputed to the Health Department Officers, concerning the operation of the Food Section while Mr. Townsend was temporarily in charge, it appears that asking Mr. Townsend to prepare a report would have had to be examined on the footing that Caesar was being asked to summarise the administration of Caesar. It is not that he would not submit a true report but the fact that his competence, probity and experience could be in issue, had to be considered.

As a result of the demonstration by certain Public Health Inspectors in May of 1978, Mr. Townsend was put in charge of the Food Section. An objection was taken against the acting appointment of a junior man (Mr. R. Robinson) to act as a Grade 4 Inspector and to be in charge of the Food Section. Mr. Robinson had returned from a course abroad where he gained certain diplomas. He was, therefore, fully qualified academically for the assignment. But the senior men would not support the move to put a junior man over them.

A document (exhibit 6) put in evidence by the plaintiff shows that between May 1, 1978 to September 18, 1978, Mr. F. Alexander was permitted to purchase from Jamaica Nutrition Holdings Ltd. (a Government Company) about \$25,000.00 of various items of food not fit for human consumption. And at all material times, Mr. Alexander was not a fit and proper person to be sold condemned food. It follows that during the immediate control of Mr. Townsend as the officer in charge of the Food Section at the Kingston Waterfront, to put it mildly, his control got out of control to the menacing danger of the public.

Daily News appears

While these things were going on, the Daily News published stories about the matter. The plaintiff has referred to four specific publications

and he has claimed that he was libelled in the issue of October 28, 1978. As I have already pointed out his report to the Mayor by way of the Senior Medical Officer is dated October 6, 1978. The "developments" in the publication of the Daily News may be summarised as shown below:

<u>No.</u>	<u>Date published</u>	<u>Substance of publication</u>
1	October 7 (page 3)	<p>A story by the first defendant under the heading:</p> <p style="padding-left: 40px;">"Condemned Food Racket Health men under scrutiny"</p> <p>In the story the following particulars are made:</p> <ul style="list-style-type: none"><li>(a) That condemned food (unfit for human consumption) had been found at two warehouses at 2, Willow Run.</li><li>(b) That a public health officer had been relieved of his duties and that a Senior Public Health Inspector was under investigation.</li><li>(c) That food unfit for human consumption had been sold to higglers at exorbitant prices.</li></ul>
2	October 24	<p>Story related under the heading:</p> <p style="padding-left: 40px;">"New condemned food probe urged. Health men say no"</p> <p>A demonstration by Public Health Inspectors armed with placards took place along the premises of the Public Health Office at Caledonia Road, near Cross Roads on October 23. The story in the paper of October 24 has the demonstration as its setting. A photograph of the demonstrating men shown with their placards is published. One of the placards had the inscription:</p> <p style="padding-left: 40px;">"Impartial Inquiry, expose the rascals."</p> <p>Another placard had this:</p> <p style="padding-left: 40px;">"3,000 bags bad flour sold for \$10,500. Makes \$57,000 profit. Who benefits?"</p>

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<u>No.</u>	<u>Date published</u>	<u>Substance of publication</u>
3	October 28	<p>A front page story is written by the first defendant under the headline:</p> <p style="text-align: center;">"Commissioner named Monday Public Probe of Bad Food Racket."</p> <p>In the story, the first defendant has disclosed that a public inquiry is to be held concerning the circumstances leading to the sale of condemned food to wholesalers who in turn sold the goods to higglers for sale to the public. The story also disclosed that one Ferdie Alexander, the owner and operator of the warehouses at 2, Willow Run had been charged with a breach of the Public Health Act.</p>
4	November 5	<p>A new Chief Public Health Inspector had been named but he is said to have received a "death threat" if he assumed duties. A short story concerning this development is published.</p>

Complaint of the plaintiff

When the plaintiff filed his statement of claim, ~~the~~ words complained of in the story appearing on October 28, were the following:

"Disclosure of the racket led to a demonstration by public health inspectors who called for an impartial inquiry into the matter, and the removal of the Chief Public Health Inspector and his Deputy."

The reports published on October 7 and 24 and November 5 as aforesaid, are stated to be evidence of malice. And the banner headline of the report published on October 28 is said to be calculated by the second defendant:

"to increase the circulation of the said newspaper for the purpose of ensuring for themselves a profit which may well exceed the compensation payable to the plaintiff."

At the trial, no evidence was produced to prove or even to suggest that the sale of the second defendant's issue of October 28, was increased over and above its daily sales as a result of the story complained of. But at the trial, leading counsel for the plaintiff sought an amendment to the statement of claim so as to include the whole story written by the first defendant except the last paragraph. The last paragraph reads thus:

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"It was also learnt by the Daily News that the Chief Public Health Inspector will be vacating his post shortly."

There was no serious objection by Mr. Jones to the amendment sought. It was, therefore, granted.

Complaint in extenso

The words complained of may now be outlined. They are as follows:

" A public enquiry is to be held into the circumstances under which condemned food earmarked for use as animal feed, was sold to wholesalers and then to higglers for public consumption.

A small committee comprising the Local Government Minister and the Mayor of Kingston will be meeting on Monday to decide on the terms of reference of the enquiry and the naming of the commissioner.

It is also understood that Mayor Arthur Jones will next week bring the public up-to-date on an interim report and investigations conducted by the K.S.A.C.

These decisions were taken yesterday when Mayor Jones, Chief Public Health Inspector Earl Foster, Public Health Inspector Deputy W. Robinson and Public Health Department medical officers met with Local Government Minister Seymour Mullings.

The Minister received reports on the investigations and allegations which have been made by the Public Health Officers.

Mayor Jones yesterday told the Daily News that since the departmental investigations had been carried out many things had come to light so the matter will be taken a step further.

Mayor Jones also disclosed that prosecution had been instituted against Ferdie Alexander who should have appeared before the Court on October 19 on a charge of having condemned foodstuff unfit for human consumption.

Alexander is scheduled to appear in court next week.

The enquiry arose out of the find of two warehouses at 2 Willow Run by public health inspectors who, after one week of investigations, dumped rotten pickled mackerel, shad, weevil-infected flour, corroded barrels of corned beef, and other food items which were bought as condemned food for pigs, but which was sold to Spanish Town Road Higglers at fantastic prices.

Disclosure of the racket led to a demonstration by public health inspectors who called for an impartial inquiry into the matter, and the removal of the Chief Public Health Inspector and his Deputy."

In his evidence, the plaintiff admitted the following facts.

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- (1) A public inquiry was in fact held to probe the circumstances whereby condemned food was sold to wholesalers and then to higglers for public consumption. In this regard, the Court has taken judicial notice of the proclamation published in the Jamaica Gazette Extraordinary on December 12, 1978, showing the appointment of a Commissioner of Enquiry by the Governor General. Retired Crown Solicitor, Mr. L. M. Tomlinson, C.D. was named sole Commissioner.
- (2) That Mr. Ferdie Alexander was charged and convicted for having in his possession for sale for human consumption food which was condemned for sale for human consumption. And under cross-examination the plaintiff said that he gave directions that the prosecution should take place.
- (3) That the food found in the warehouses of Mr. Alexander was seized, treated and dumped. And some was recycled and sent to the Prison Farms as animal feed.

#### Reaction to publications

The plaintiff said that on the 7th October, the date of the first publication, he received a telephone call in which the caller expressed surprise that he the plaintiff could have been involved in a "racket." More calls were received by him on October 24. About 30 persons spoke to him about the press report. There was so much repercussion that his former friends and associates tried to shun and avoid him. He was always on the defensive, that is to say, that he had to offer a lot of explanation to anxious and inquiring persons. Said he:

"I was very upset about it."

As I have already outlined, the publications on October 7 and 24 are not relied on as being libellous. They are relied on as evidence of express malice. The sting of the libel is alledged to have been outlined in the October 28 publication. While the plaintiff was giving his evidence, I formed the impression that his complaint about the publications may be put in the form of a syllogism.

- (1) Anything which touches the Health Department,  
touches me:
- (2) But I am the Head of the Inspectorate of that Department:
- (3) Therefore, it touches me:

And the word "racket" used in the article has not found favour with the Chief Inspector. A part of the cross-examination by Mr. Jones should be mentioned at this stage:

Q: "Do you agree that in the Jamaican context, "racket"  
means the obtaining of money by unscrupulous means?"

A: Yes Sir.

Q: By that means, would you say that what Mr. Alexander was  
doing was being engaged in a racket?

(After objection by Mr. Scott was overruled)

A: I do not know if he was in a racket.

Q: Would you regard what Mr. Alexander was doing at Willow  
run as unscrupulous?

A: I would not regard it so. Food may become unsound for  
several reasons. But if the food was obtained for the  
sale for human consumption without its being examined  
and passed with his knowledge, I would regard this as  
unscrupulous.

Q: If he exposes condemned food for sale for human consumption  
would you regard that as unscrupulous?

A: Yes Sir."

In a dialogue between Humpty Dumpty and Alice, the former made  
it quite clear, that he was able to make a word mean what he decided it  
should mean. Alice was somewhat surprised with this asseveration of  
Humpty Dumpty.

The use of the word "racket" in the publications of October 7 and  
28, may be regarded as either a statement of fact or a comment on the facts.  
If it is the latter, is the comment a fair one? In order to deal with this  
aspect of the case, I shall refer to a part of the evidence.

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Mr. Perdie Alexander

The plaintiff, in a minute dated October 10, 1978 and addressed to the Town Clerk, has attached a copy of the list of purchases made by Mr. F. Alexander from Jamaica Nutrition Holdings. The minute reads in part:

"You will observe that a large quantity of damaged and/or unsound foodstuffs was sold to Mr. Alexander at a value of well over \$40,000. 'N.A.' on the list indicates that the value of the commodity is not available at the moment. All these damaged and/or unsound foodstuffs were sold without the knowledge and permission of the Public Health Department with the exception of the following items:

- (1) 500 bags flour Ex. Ocean Voyage on 19/4/78
- (2) 3,000 bags flour Ex. M.V. Port on 21/6/78
- (3) 200 bags flour Ex. Westcliffe on 18/9/78."

This roaring business between the Company which has a warehouse near the waterfront at Newport West and Mr. Alexander, covered a period from February 1977 to September, 1978, a period of about 19 months.

It is the duty of the Public Health Department to have an Inspector assigned to the inspection of warehouses which store goods intended for sale for human consumption. And in particular it is the duty of the Department to see that there is an Inspector who is required to examine and supervise the food which is stored by Jamaica Nutrition Holdings. If food removed from the warehouse is fit and wholesome, then all is well. But where the food has been condemned as being unfit for human consumption, Jamaica Nutrition Holdings may not dispose of the condemned food by way of sale to any person unless certain conditions are fulfilled.

- (1) The purchaser must be a reputable person who will not allow the food to get into the hands of vendors who will sell it for human consumption.
- (2) The purchaser should be a person who is a pig farmer intending to re-cycle the condemned goods for the use of animals on his farm.

- (3) The Public Health Inspector who has condemned the goods is required to see that if they are to be sold, the purchaser or wholesaler must be a person whom he regards as reputable.

Part of the cross-examination is interesting:

Q: "The reputation of persons permitted to purchase condemned food is an important factor at all times to be considered by the Public Health Inspector -- is that correct?"

A: Yes Sir."

And then the cross-examiner (Mr. Jones) having got the clear reply above, went back to the attack. It could be that he was anxious to remove any lurking doubt.

Q: "Am I right in thinking that only persons of the highest reputation and integrity are permitted to purchase unfit or condemned food?"

A: Yes Sir.

Q: Did you in September 1978, prior to the discovery of the warehouses at 2 Willow Run, include Mr. Alexander in the category of a person of the highest reputation and integrity?"

A: No Sir."

The rule is that once counsel has got a clear answer which assists his case, he should leave the witness alone on that point. Trying to polish that which on the first blush looks like gold, may cause the valuable article to be depreciated. Notwithstanding this well known adage, Mr. Jones confronted the plaintiff with this question:

Q: "How would you describe Mr. Alexander in terms of reputation and integrity for the period that you have known him?"

A: From reports I received from my inspectors, I got the impression that he is a person likely to sell for human consumption food which is unsound or unwholesome."

File is kept

After the re-examination of the plaintiff, the Court asked him some questions. The replies to a series of questions on a particular point may be stated briefly as follows:

- (1) The Health Department keeps a file of applicants who wish to buy food unfit for human consumption.
- (2) That file would be accessible to the Public Health Inspector at the wharf or warehouse and to the Grade 3 Inspector who assists him.
- (3) The file is kept at Head Office and is open for inspection by any of the officers.
- (4) Mr. Alexander's name does not appear on the file because he had no pig farm.

And then the witness continued:

"The only purpose for which food unfit for human consumption is sold, is for re-cycling to feed animals like pigs and dogs."

The last question put to the witness by the Court is shown hereunder:

Q: "Did your investigation disclose the period during which the whole or substantial part of the food and the stuff found at Willow Run, were purchased?"

A: Yes it did. It was the period between May and a date in September. During the whole period, Mr. Townsend and Mr. Blake were in charge of the food section."

The law as to the examination, condemnation and seizure of food unfit for human consumption is clearly set out under section 28(1) of the Public Health Act. I need not set out the provision. For over half a century, it has been the law that food intended for sale for human consumption anywhere in Jamaica, is liable to be inspected by the Medical Officer of Health, a Public Health Inspector or by any other person duly authorised for that purpose. If on inspection, the food or article is found to be unfit, unsound or unwholesome for human consumption, it is to be seized and destroyed or otherwise disposed of in such a way that it is not consumed as food by humans. That generally speaking, food condemned for human consumption should be destroyed, is a fact which is known by every citizen of Jamaica

of average intelligence and maturity. So that if condemned food finds itself in large quantities in the hands of one man who in turn sells it to higglers for them to pass on the stuff to the public by way of sale, the ordinary man would be driven to the conclusion that some form of "racket" is in operation. And it does not matter whether the meaning of the word is that which is given in the United States where the word is believed to have originated or whether the meaning is that which the plaintiff gave under cross-examination.

Collins Westminster Dictionary has a definition of the word "racket" as follows:

"an occupation by which much money is made illegally."

It could be that one of the placard bearers among the demonstrating Public Health Inspectors on October 23, had the above definition in mind. As I have already pointed out his placard displayed the following:

"3,000 bags bad flour sold for \$10,500.  
Makes \$57,000 profit. Who benefits?"

What the Public Health Inspector was implying with his placard was that a "racket" had been unearthed and that he was supporting the strong call for an "impartial inquiry." I hold, therefore, that on the facts there was justification for the writer or the first defendant to use the word "racket" in the two articles in which that word appears and in the context in which the said word is used. Publishing the stories with the impugned word would not be a libel on the plaintiff merely on that ground. And even if I am in error in holding that the facts justified the use of the word "racket", it is my view that its use was fair comment on a matter of public interest and devoid of malice in any shape or form. I may be held guilty of putting the cart before the horse. For in strict law, fair comment is not required to be relied on unless the words complained of are defamatory of the plaintiff.

#### Public enquiry held

The plaintiff told the Court that he gave evidence at the public inquiry and that he was present at all the sittings. What I find somewhat startling is the evidence of the plaintiff that neither the Public Health Inspector whose duty it was to inspect the food stored at the Jamaica Nutrition Holdings warehouse nor the Inspector in charge of the Stony Hill

area was called to assist the Commissioner. According to the plaintiff, as a result of what may be called "industrial action" on the part of Public Health Inspectors in May, 1978, a senior officer (his Deputy Chief) was temporarily put in charge of the Food Section which would cover the disposal of food found unfit for human consumption. And he has admitted that a substantial quantity of the condemned food found with Mr. Alexander was purchased during the period that his Deputy Chief (Mr. Townsend) was in charge with Mr. Blake assisting him. It was the discovery of the condemned food in Mr. Alexander's warehouses and the subsequent exposure by the press report which was the driving force behind the demonstration of about twenty Public Health Inspectors on October 23.

Part of the report published in the story on October 24, states as follows:

"The inspectors who demonstrated outside their Caledonia Road offices in Cross Roads yesterday, stated that recent press reports had cast aspersions on all Health Inspectors when only a few were to be blamed."

One of the terms of reference in the Commission of Enquiry is stated as follows:

"To examine and report on the role of the Public Health Department, state Trading Corporation and its subsidiaries and any other agencies involved in the disposal of imported foods and food-stuff that are damaged or unfit for human consumption and to determine whether any individual or individuals in any of these agencies are involved in improper practices relating to the disposal of such goods."

The Court was told that Counsel from the department of the Attorney General marshalled the evidence. What is known is that whatever the reason may be, both Mr. Townsend and Mr. Blake did not go into the witness box. Mr. Alexander - as was expected - did not appear also. His stance is understandable. Was there something which the relevant Public Health Officers did not want to disclose publicly? Was the witness box before the Commissioner an object of fear and trembling?

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Article published on October 28

I have examined very carefully the story about the "bad food racket", published by the second defendant on Saturday October 28. I find that it contains a factual situation which the plaintiff himself has conceded. The facts support the use of the word "racket" and also support what comment, if any, which may be found in the story. Any such comment made is fair. The procedure which was followed resulting in Mr. Alexander purchasing a vast quantity of condemned food - a man not qualified to effect the purchase - and then passing on the stuff to an unsuspecting consumer was irregular, frightening and reprehensible. The circumstances surrounding this scandalous affair were either the result of sheer bungling, sheer neglect of a duty which concerns the public, an iniquitous scheme designed for profit or a combination of all these elements. An opportunity was, therefore <sup>made</sup> open for a free press to step in. A vigorous, searching and clamorous denunciation was therefore called for. As the developments in this regrettable episode took shape, a vigilant press was also required to take shape and inform the public of what was happening in which a key public establishment was involved.

So long as the facts were fairly and correctly related that was enough. And so long as the commentator or the journalist kept within the proper limits of fair comment and untouched by malice, his efforts deserved some form of adulation instead of being greeted with a libel action.

Public men and the press

One of the hazards of a man assuming a public office is that his public acts, the management of his department and the conduct of his subordinates in the execution of their public duty, are open to the scrutiny and criticisms of the press and the citizen.

I shall cite the words of Cockburn, C.J. which he uttered about 117 years ago. See *Campbell v. Spottiswoode* [1863], 3 E & S. 769 pp. 776-777:



"A line must be drawn between criticism upon public conduct and the imputation of motives by which that conduct may be supposed to be actuated; one man has no right to impute to another, whose conduct may be fairly open to ridicule or disapprobation, base, sordid, and wicked motives, unless there is so much ground for the imputation that a jury shall find, not only that he had an honest belief in the truth of his statements, but that his belief was not without foundation..... It is said that it is for the interest of society that the public conduct of men should be criticised without any other limit than that the writer should have an honest belief that what he writes is true. But it seems to me that the public have an equal interest in the maintenance of the public character of public men; and public affairs could not be conducted by men of honour with a view to the welfare of the country, if we were to sanction attacks upon them, destructive of their honour and character and made without any foundation etc".

I am unable to improve on the language of this distinguished judge. I, therefore, adopt them as my own.

In the climate of a rapidly changing society, it is the duty of the Court to examine scrupulously the claim of a public official or of a private person functioning in an office or place where public funds are expended, that he has been libelled by an article in the press or otherwise by some person as a result of an alleged act of his which concerns his office. Because he is the plaintiff does not inhibit the Court from analysing or allowing a diligent analysis of the facts and circumstances on which he relies. If his skin is thin or if his sensitivity leaves much to be desired, the Court must treat his disability as irrelevant when its decision is being considered.

I shall quote a simple statement of the law from a famous judge who is still giving guidance to the Courts in Jamaica. The words are those of Diplock, L.J. (as he then was) in *Astaire v. Campling*, 1966 1 W.L.R. R.34 at p.41C:

"A statement does not give rise to a cause of action against its publisher merely because it causes damage to the plaintiff. The statement must be false and it must also be defamatory of the plaintiff: that is to say, the statement must itself contain, whether expressly or by implication, a statement of fact or expression of opinion which would lower the plaintiff in the estimation of a reasonable reader who had knowledge of such other facts, not contained in the statement, as the reader might reasonably be expected to possess."

Where a matter of public interest is being debated or exposed, the employment of robust, fair and analytical language is not only permissible

but is welcome. The writer may resort to any form of journalistic weapon which is allowable. A modern Pope may arise or the figure of a William Makin may again appear. In order to cleanse an area which is shown to be inimical to the public good, vehement, scathing and unpleasant attacks on the operation of a government department or on the conduct of public men, may have to be employed. And it is the duty of the Court to give a reasonable opportunity to a writer or commentator to expose what he honestly believes to be a matter of public interest and concern. No innuendo however skilfully formulated and pleaded will assist a public official who claims that he has been damaged by a publication unless he can show that in the exposure or debate involving his public office, false and malicious allegations have been made against him.

It is regretted that any step had been taken to launch this action. It was unwise. After all, the plaintiff had served the public faithfully and well for about 40 years. He had been panegyricized by the K.S.A.C. and by the Municipal Services Commission. He had reached the compulsory retiring age. But in the closing stages of an extension granted to him, a section of his Department failed to function satisfactorily. His establishment of 72 officers including himself had run into a troubled sea. And one man cannot a department make. His own reports (exhibits 5 and 6) - which I do not find necessary to quote fully - show that he himself was not satisfied with the operation of the Food Section. And as a direct result of this failure, "the Willow Run Affair" emerged. The call for a public inquiry having been granted and he having given evidence before the Commissioner, he should have taken his bow from the stage gracefully without any move designed to sue for libel - a move which was doomed to failure from the sound of the whistle.

The advice of Horace that when the horse is found to be tired it should be taken out of harness, should not be forgotten. Delay may make the animal a kind of laughing stock thus tarnishing an established reputation which was earned over the years when it was active and useful.

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I find that the plaintiff has failed miserably to establish what he set out to do. By no stretch of the imagination, the words complained of are capable of sustaining the interpretation which he has put on them. No malice has been proved and he has failed to show how and in what way he has been touched. No one was called to suggest that he understood the article to be a personal attack on the plaintiff. The strong advocacy of Mr. Scott is not capable of making the impossible a reality. In his final address, he spent a long time subjecting the report complained of to a minute linguistic examination. In so doing he displayed courage, persistency and skill. Whether in a matter of this kind there is any duty for the Court to supervise a game of semantics, I have my doubt.

There must be judgment for the defendants with costs.