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Judgment Book

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 29/75

BEFORE: THE HON. MR. JUSTICE HENRY, J.A.
THE HON. MR. JUSTICE MELVILLE, J.A.
THE HON. MR. JUSTICE CARBERRY, J.A.

GLEANER CO. LTD. - DEFENDANT/APPELLANT

V.

CHARLES WOODROW WRIGHT - PLAINTIFF/RESPONDENT

Mr. Norman Hill, Q.C., and Mr. David Murray for the Defendant/Appellant.

Mr. Berthan Macaulay, Q.C., Mr. K.C. Burke and Mrs. M. Macaulay for the Plaintiff/Respondent.

March 1, 2, 3; April 17, 18, 19, 20; and July 12, 1978; February 21, 1979.

CARBERRY, J.A.

On the 12th day of July, 1978, we gave judgment in this matter, allowing the appeal and ordering a new trial on both liability and damages, and we promised to put our reasons in writing. We do so now.

On Monday January 29, 1973, the Appellants published in their "Star" newspaper an account of the undefended divorce petition brought by the Respondent's wife against him and heard before Mr. Justice Rowe on Friday the 26th January, 1973. The report was published under the caption: "Cruel hubby caused wife to have many miscarriages." The divorce was on the ground of cruelty, and after a preliminary paragraph purporting to sum up the story, it consisted of a report of the wife's evidence, which broadly speaking occupies two pages of foolscap, and a short paragraph setting out the evidence of her supporting witness Dr. Kenneth Royes as to her condition as a result of the Respondent's treatment. The case was a distressingly average

type of case, and no exception was taken to the headline or content, save as to a short paragraph taken from the account of the wife's evidence. It reads:-

> "Petitioner said that respondent became ill in December, 1971, and was admitted to Bellevue Hospital as a patient of DR. KENNETH ROYES. He left the hospital before he was discharged and accused her of conniving with the doctor to keep him there."

The Respondent's Statement of Claim alleged:-

> "4. By the said words the Defendant meant and was understood to mean that the Plaintiff was mentally ill and was hospitalized in a mental institution.
>
> Particulars pursuant to Section 170(2) of Cap. 177.
>
> (a) The Plaintiff was the Respondent in the Divorce proceedings in respect of which the aforementioned words were published.
>
> (b) The only Bellevue Hospital in Jamaica is a mental asylum.
>
> (c) Dr. Kenneth Royes was at all material times a Psychiatrist and Senior Medical Officer (acting) attached to the Bellevue Hospital."

Section 170(2) of the Judicature (Civil Procedure Code) of Jamaica reads:-

> "In an action for libel or slander if the Plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matters on which he relies in support of such sense."

This provision formerly to be found in the United Kingdom Rules of the Supreme Court in Order 19 Rule 6 (see now Order 18 Rule 12, and Note 18/12/14), now appears in Order 82 Rule 3. In brief it requires the Plaintiff in an action for libel or slander to give particulars of facts which he relies on to show that there is an innuendo or hidden defamatory meaning about which he complains in the offending matter. Where he alleges meanings which are not obvious he should also set them out.

The Defence pleaded to this action canvassed the following points: (a) There was a denial that the words were defamatory or capable of being defamatory; (b) The Defendants asserted that the words were a fair and accurate report of judicial proceedings: this involves two aspects, first the common law defence of privilege on that score, and secondly the statutory defence available to newspapers under The Libel and Slander Act Section 15, (formerly Cap. 219) which provides:-

> "A fair and accurate report in any newspaper of proceedings publicly heard before any Court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged....."

The Section was borrowed from the United Kingdom Law of Libel Amendment Act, 1888, Section 3. The consensus of opinion is that the common law affords only qualified privilege, but that the Statute provides absolute privilege. (c) Finally, the Defence pleaded that the words complained of were true, and set up the defence of justification. (d) The Defendants also added that they had offered to make an apology to the Plaintiff, but that he had rejected it. As no payment into Court was made the offered apology did not fall within the terms of Section 2 of The Libel and Slander Act (borrowed from Lord Campbell's Act of 1843 Section 1) but it was a matter to be considered on the issue of damages.

The action was heard before Mr. Justice Wilkie and a special jury on the 19th, 20th and 21st of May, 1975. It resulted in a verdict by the jury in favour of the Plaintiff/Respondent in the sum of $2,000.00. The present appeal seeks to set aside that Judgment.

At the trial the Plaintiff/Respondent was the principal witness. He claimed that the particular paragraph complained of had caused him great embarrassment at his work place and elsewhere. He is an engineer

by profession and claimed that his workmen or some of them or possibly workmen in the plant not under his supervision wrote up rude paint and chalk marks on the walls calling him the "Bellevue man","mad baby killer" and so forth. He denied on oath that he was ever a patient of Dr. Royes, or had ever been treated by him. He admitted having been a patient of Dr. Mendez in August 1972 and that he was admitted to St. Joseph's Hospital, but claimed that it was for the treatment of shingles only. Dr. Royes was a foremost psychiatrist attached to Bellevue Asylum and he would consult him only for mental illness. While at St. Joseph's he was fully aware of what happened there and was "collective". He denied having been seen or treated by Dr. Royes, and denied receiving injections or drugs from him or on his orders. He had been in St. Joseph's for about two weeks and had left in his pyjamas and dressing gown. He discharged himself from the hospital. He equated treatment by Dr. Royes and Bellevue, and his complaint was that the offending passage meant that he was mad, mentally ill, and that he had lost the chance of a favourable business deal because of it. He knew that Dr. Mendez was off the island, and that Dr. Royes was dead.

The note taken by Mr. Justice Rowe of the undefended divorce case was put in evidence by consent. It occupies some three and a half pages of foolscap. The jury had the chance to compare it with the Defendant/Appellant's version in the "Star" newspaper. Rowe, J.'s note of the wife's evidence corresponding to the passage complained of reads thus:-

> "In July, 1972, husband was ill in hospital. I arranged for him to see Dr. Royes as Respondent was very depressed. Respondent agreed to see Dr. Royes. After a few occasions he ceased. After a while, Respondent wanted to go home. He wanted his clothes and his keys. He came out of Hospital in dressing gown and when he reached home

> he kicked down door and locked up telephone.
> My colleague was terrified; I felt embarrassed.
> I began to feel that I had reached physical and
> mental end of road....."

The longhand note taken by a trial judge hearing an undefended divorce is at best of times short and condensed. It does not purport to be a verbatim note of the evidence given. The note made by Rowe J. does not mention the name of the hospital. If the name of the hospital was not mentioned but the name of Dr. Royes was, it is easy to see how a reporter could have assumed that the hospital was Bellevue, with which Dr. Royes had become identified. Neither the reporter nor the wife was called to give evidence. It is clear however that Bellevue was wrong: the hospital was St. Joseph's. The date was also wrong, it was July, 1972 (Plaintiff/Respondent says 5th to 18th August), not December, 1971. So the Newspaper report was incorrect on both these points.

The trial took a rather remarkable course. At the close of the case for the Plaintiff, counsel for the Defence showed to counsel for the Plaintiff the medical record of the Plaintiff. It is not clear whether these were the records from St. Joseph's Hospital, or Dr. Mendez, probably the former. On the strength of this, Plaintiff's counsel formally admitted that Plaintiff had been admitted to St. Joseph's Hospital for shingles and paranoid depression, that he was referred to Dr. Royes, who came into the hospital and himself administered one injection. It appears that he visited the Plaintiff on more than one occasion. Plaintiff's counsel admitted that Plaintiff was seen by Dr. Royes, but added that "it doesn't affect the gravamen of my case."

The Defence called no witnesses and closed its case after this admission was made. An adjournment was taken, and next day counsel addressed and the judge summed up to the jury.

Unfortunately no verbatim note was taken of the Summing-up. We have been presented with outline notes made by the judge as to what he proposed to say. Alternative versions prepared by the Defendant/ Appellants' instructing attorney and by the Gleaner Reporter were not agreed to and are not before us. This puts everyone in a position of some difficulty, particularly when the Grounds of Appeal address themselves to non-direction on important aspects of the case. It is not easy to understand why in expensive litigation of this sort the precaution of employing a shorthand reporter for the summing-up was not taken by one or other party.

Five Questions were left to the jury:-

1. Are the words in their natural and ordinary meaning defamatory to the Plaintiff? Answer: Yes.
2. Are the words a fair and accurate report of the proceedings in the divorce proceedings? Answer: No.
3. Are the words substantially true? Answer: No.
4. Is the apology sufficient? (no answer given).
5. If yes How much damages? Answer $2,000.00.

Before us all the grounds or defences argued below have been in effect re-argued, and it has been argued that the directions of the learned trial judge as to them were inadequate and that the jury's verdict was unreasonable.

(a). The first ground of appeal was to the effect that the verdict of the jury was unreasonable and could not be supported having regard to the evidence and the admissions made on behalf of the Plaintiff/ Respondent. This raised the issue of whether the words were defamatory or capable of being defamatory. Mr. Hill for the Appellants advanced a somewhat technical argument. He said that to report that the Plaintiff had become ill and had been admitted to a hospital and treated

by a Doctor was not on the face of it defamatory; it became defamatory only by reason of the particular hospital and the particular doctor. It was therefore necessary for the Plaintiff to prove the particular facts relied on to show that there was an innuendo or hidden defamatory meaning. The Plaintiff had therefore correctly pleaded an innuendo. It was not open to the jury to find that the words in their natural and ordinary meaning were defamatory of the Plaintiff, they could only find the word defamatory if the innuendo had been left to them, and there was no sufficient evidence to support the innuendo as only the Plaintiff had given evidence about Bellevue and Dr. Royes.

I must confess that I (but fortunately not my brothers) at first found great difficulty in following the argument. The Bellevue Hospital is so well known as the only asylum or explicit mental hospital in Jamaica that at first glance I myself would have thought the words defamatory in their ordinary and natural meaning. Further, the status of Bellevue Hospital is a matter of Statute; it is expressly so recognized and treated in The Mental Hospital Act. I would have been prepared to treat its status and function also as a matter of which judicial notice could be taken. (Though the late Dr. Royes was almost equally well know, I agree that some proof of the nature of his specialist practice would be required). However, in any event, the questions as formulated for the jury were agreed by the respective counsel, no question directed to the innuendo as opposed to the ordinary and natural meaning was left to the jury and we do not consider that at this stage it is open to the Appellant to contend that an inappropriate question was left to the jury: See Seaton v. Burnand (1900) A.C. 135 at 143.

I think, speaking for myself, that the words "admitted to Bellevue as a patient of Dr. Kenneth Royes" would be very likely to convey to the ordinary Jamaican man in the street, reasonable man, or man in the jury box the impression that the person so admitted was suffering from mental illness and would be prima facie defamatory: See Halsbury, 3rd. Edition Vol. 24 page 23, para. 44, and Morgan v. Lingen (1863) 8 L.T. 800; Totten v. Sun Printing & Publishing Association (1901) 109 Fed. R. 289 and Cowper v. Vannier 20 Ill. App. 2 D. 499 (where imputing that the Plaintiff was recovering from a mental illness was held libellous).

However, in as much as we have ordered a new trial this issue will be once more before the jury, who will be required to find on these issues, with properly formulated questions left to them to cover the technical points involved.

(b). Justification: It was complained that the learned trial judge had misdirected the jury on the issue of justification.

It is clear that the Defendants' case, coupled with the admission by counsel for the Plaintiff, had established that the Plaintiff was not speaking the truth when he denied ever having been treated by Dr. Royes for mental illness. We must take it as established that he had been admitted to St. Joseph's Hospital for shingles and paranoid depression, and that he was there treated by Dr. Royes. It was clear however that he had not been admitted to Bellevue. It was also clear that he had left the hospital discharging himself. It was also clear that the "Star" had got the dates wrong as well as the hospital.

The law of defamation has over the years become one of the most technical portions or areas of the common law, and this appears most clearly in the defence of justification. There are historical and sociological reasons for this. The remedy for defamation was introduced and strengthened to reduce the incidence of duelling: Plaintiffs were to be persuaded to use the legal remedies rather than to resort to violence to defend their honour. For this reason it appears that the early cases were heavily weighted in favour of the Plaintiff. Further, the law is here engaged in balancing two conflicting and competing interests, that of the Plaintiff in preserving his reputation (and the community's interest in seeing that he did so by legal and non-violent means) and on the other hand the traditional rights of free speech and the community's right to discuss and comment on matters of public interest. McPherson v. Daniels (1829) 10 B. & C. 263 at 272 contains an often quoted dictum by Littledale J. that "The law will not permit a man to recover damages in respect of an injury to a character which he either does not, or ought not, to possess." In some other common law jurisdictions statute law requires not merely that the Defendant prove that the words complained of were true, but that he prove that it was for the public benefit that they were published: (See for example, Howden v. "Truth" and "Sportsman" Ltd. (1937) 58 C.L.R. 416: Defamation Act, 1912, New South Wales).

Since the law presumes that every man is of good repute until the contrary is proved, it is for the Defendant to plead and prove affirmatively that the defamatory words are true or substantially true: (Halsbury, 3rd. Edition Vol. 24, page 44, para. 75: and see Beevis v. Dawson (1957) 1 Q.B. 195. The Defendant is also required to give

particulars of the matter relied on to justify the offending words. The justification must be as broad as the libel itself. All the charges complained of in the offending article must be justified and they must be accurately met. This presses hard upon the Defendant as some of the early cases show: See for example Weaver v. Lloyd (1824) 2 B. & C. 678; 107 E.R. 535 (The case of the cruel horseman); Clarkson v. Lawson (1829) 6 Bing 266 and 587; 130 E. R. 1283 and 1407 (The case of the extortionate proctor (bailiff); Goodbourne v. Bowman (1833) 9 Bing 532; 131 E. R. 712 (The case of the corrupt or pecculating mayor); Smith v. Parker (1844) 13 M. & W. 459; 153 E. R. 191 (The case of the violent school teacher); Helsham v. Blackwood (1851) 11 C.B. 111; 138 E.R. 412 (The case of a report suggesting an unfair duel).

Further, it will be noted that it is the charges complained of that must be justified. This means that it is open to the Plaintiff to choose to complain of one or two passages, sentences, out of an article or matter that may contain other charges or remarks which are as damaging or even more damaging than those of which he complains. As to these other charges as to which no complaint is made it seems that all the Defendant can do is to ask that the whole publication or matter be put before the jury, so that they may see the context of the passage complained about: Cooke v. Hughes (1824) Ryan & Mood 112; 171 E. R. 961 and see S. & K. Holdings Ltd. v. Throgmorton Publicns (1972) 3 All E.R. 497. The Defendant may not plead "why pick this passage out, I said much worse things about you of which you have not complained"; See Viscount Sommonds in Plato Films Ltd. v. Speidel (1961) A.C. 1090 at page 1125; it may be a subject of comment only: Lord Radcliffe, at page 1127; that the position may produce some degree of injustice is

clear: See Lord Denning at pages 1142 - 1143. Efforts by Defendants to meet this by offering evidence in mitigation of damages to show that the Plaintiff ought not to enjoy a reputation are severely curtailed by the rule that what is in issue is the Plaintiff's general reputation and not his character or disposition, and that proof of specific acts by him may not be offered unless it goes to show that by reason of their being well known in the community, he had no reputation or very little: See Scott v. Sampson (1882) 8 Q.B.D. 491; Hobbs v. Tinling (1929) 2 K.B. 1 approved in Plato Films Ltd. v. Speidel (supra). If the Plaintiff does go into the witness box, he personally may be cross-examined on these matters "as to credit" but no evidence can be led on them if he does not admit or disputes them: Hobbs v. Tinling, (supra). This has led to some odd results, see Goody v. Odhams Press Ltd. (1966) 1 Q.B. 333; (1966) 3 All E.R. 369 (One of the robbers in the Great Train robbery suing for libel: to what extent could his previous convictions be put in evidence. Would it be necessary to prove the train robbery over again?) However, the position is modified by two factors: the Defendant may plead and prove substantial justification, and if the charges made in the offending article are severable, he may plead and prove partial justification, i.e. he may show that some of them are true. There is now a third factor: The Defamation Act (closely following the U.K. Defamation Act, 1952) now provides in Section 7:-

> "7. In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges."

The Section quoted mitigates but does not substantially alter the effect of the common law. It has always been open to the Defendant to cover "the main charge or the gist of the libel". (Gatley: Libel and Slander, 7th Edition (1974) paragraph 1043; Halsbury, 3rd. Edition Vol. 24: Libel and Slander, page 46 paragraph 81). The question at issue has usually been, and it is so here, what is the main charge or gist of the libel? Has it been met?

Illustrations are to be found in cases such as Edwards v. Bell (1824) 1 Bing 403; 130 E. R. 162; (The parson who was alleged to have abused his congregation from the pulpit); Clarke v. Taylor (1836) 2 Bing N.C. 654; 132 E. R. 252; (exposing a swindler who had swindled in Manchester, and observing he had just come to Leeds: allegation re Leeds met by proof of swindling in Manchester); Morrison v. Harmer (1837) 3 Bing N.C. 759; 132 E. R. 603; (exposing the quack cure-all patent medicine: the real ground of complaint that it was a system of wholesale poisoning being met; it was not necessary to justify epithets "scamps and rascals"); The case of Alexander v. N.E. Railway (1865) 6 B. & S. 340; 122 E. R. 1221; is worth more than a passing mention, it covered, as does this case, both justification and the defence of reporting of judicial proceedings. The report published by the train company stated that the Plaintiff had been convicted for riding on their train without a ticket and fined £9.1.10 including costs, or three weeks imprisonment. The defence pleaded that in fact Plaintiff had been fined £1 and to pay costs of £8.1.10, or three weeks in default; Plaintiff replied that it was two weeks in default, (which must be taken to be true). At issue was whether the plea was sufficient justification. This was then a point of pleading. Fully argued, some of the remarks of the Court will bear

repetition: Mellor J: "The gist of the libel is that the Plaintiff was sentenced to pay a sum of money, and in default of payment to be imprisoned." Cockburn C.J: "The case resolves itself into a question of degree of accuracy, which is for the jury....." Blackburn J: "The substance of the libel is true: the question is whether what is stated inaccurately is of the gist of the libel." The Court held that the plea, as a plea, was sufficient. It would be for the jury to decide if it was in fact a substantial justification, and sufficiently accurate. We do not know what the jury did in fact decide.

The same problem of misreporting the conviction arose in Gwynn v. S.E. Railway (1868) 18 L.T. 738. Here the Plaintiff complained that the report alleged a penalty in default of three days hard labour instead of three days imprisonment. Cockburn C.J. left it to the jury to say whether there was any substantial difference: if so justification would fail; observing however that as Plaintiff would in either case have been shown to be acting dishonestly the damages would be affected. Was the statement substantially true? The jury answered by awarding Plaintiff £250 damages. Gwynn's case certainly shows that English juries did not like Railway companies. But it also shows that the issue of substantial justification, (and also the accuracy of the report), is a matter for the jury, properly directed. So far as the effectiveness of the pleading goes, the Courts were usually prepared to hold that it was sufficient: Biggs v. Great Eastern Railway (1868) 18 L.T. 482. Whether the gist of the libel has been met is almost always then a question for the jury, and it must be rare for a case to arise in which it could be said that the matter should be withdrawn from them and the charge held to have been justified, or that their verdict that it was not substantially justified

could be set aside as perverse; (it would be equally difficult to set aside their verdict that it had been justified: Broome v. Agar (1928) 138 L.T. 698). But it is clear that whether the gist of the libel has been met must at least have been left sufficiently clearly to the jury if the verdict is to be upheld. The complaint here is that the learned trial judge did not sufficiently direct the jury at to what constituted the "sting" or "gist" of the libel; it is also complained by the Appellants that the learned judge should have told the jury that that "sting" or "gist" had been justified.

Remembering that what we have here is the "outline" of the summing-up, and that what is alleged in effect is "non-direction" we have found it difficult to decide. But we have anxiously searched for directions on these matters: Was the sting of the libel that the Plaintiff was mentally ill and was hospitalized in a mental institution? Does the St. Joseph's Hospital take "mental" patients? (There seems to be no evidence on that save that the Plaintiff went there, and for that illness as well as shingles). Did the sting go further, i.e, that he was so mentally ill that he needed admission or confinement in a mental institution? Before us, counsel for the Plaintiff has suggested additional "stings" to the libel, i.e. that having regard to the character of Bellevue in the Mental Hospital Act, there is a suggestion that he had "escaped" therefrom and so was not only still mentally ill but dangerous. (It should be observed however that this further suggestion seems to have been advanced for the first time before us and was not pleaded).

While the learned trial judge did direct the jury on many of the matters relating to the plea of justification that have been mentioned above, we came to the conclusion that he did not sufficiently direct them as to what was the gist of the libel, and invite their attention to the various "gists" that might be alleged to be fairly found in it, and as to whether the Defendant/Appellant had proved substantially that which was complained of. As conducted the case presented certain difficulties. It may be doubtful if the jury fully appreciated the admission that was made by the Plaintiff's counsel, or understood the extent to which it had been shown that the Plaintiff had denied or concealed the truth, wittingly or unwittingly in the witness box; and if unwittingly, did this not in itself lend support to the charge that he was "mentally ill"? The question of whether there has been substantial justification is however one for the jury, properly directed. We are not, I think, entitled to substitute our own views upon the matter, and on this score we were of opinion that there must be a new trial and so ordered on the 12th July, 1978.

One further observation should I think be made: there is a difference between whether the substantial sting of the libel has been justified, i.e. whether the real charge or sting has been met, or if not whether there is still matter to be complained of that has not been justified, and on the other hand the question as to the accuracy of the report as a report. For example, the question of dates may be relevant to the accuracy of the report (was the witness reported correctly on the dates given by her), but would have little bearing on whether the sting of the libel, mental illness et cetera had been established. I am not sure that this was sufficiently made clear to the jury on the

directions given, and they may have been led to conclude that if the Defendant alleged mental illness in December, when it was in fact August of the ensuing year, the sting of the libel had not been met.

Having regard to our views on the issue of justification it is possible to deal with the other issues more succinctly.

(c). At common law qualified privileges attached to reports of judicial proceedings. In R. v. Wright (1799) 8 Term R. 293, 101 E.R. 1396 (actually a case on Parliamentary privilege), Lawrence J. remarked on the publication of reports of court proceedings:-

> "Though the publication of such proceedings may be to the disadvantage of the particular individual concerned, yet it is of vast importance to the public that the proceedings of Courts of Justice should be universally known. The general advantage to the country in having these proceedings made public, more than counterbalances the inconveniences to the private persons whose conduct may be the subject of such proceedings....."

Over the years the privilege has been extended as to the types of proceedings that may be covered, whether they can be reported on a day to day basis till completion, whether "unscheduled" interruptions may be reported, whether they may be abridged or condensed versions, or must be verbatim. Commentary must be kept distinct from the report, but if what is reported is "substantially a fair account of what took place, there is entire immunity for those who publish it.." per Campbell L.C.J. Andrews v. Chapman (1853) 3 C. & K. 286; 175 E.R. 558. See also Lewis v. Levy (1858) E.B. & E. 537; 120 E.R. 553.

The burden of proving the fairness and accuracy of the report rests on the Defendant who publishes it but slight flaws are permissible: Hope v. Leng Ltd. (1907) 23 T.L.R. 243.

The fairness or accuracy of the report is a question for the jury: Turner v. Sullivan (1862) 6 L.T. N.S. 130; not every mistake

will destroy the privilege, but some very slight mistakes have been held to do this: Blake v. Stevens (1864) 11 L.T. N.S. 543 (Text book citing a case alleging Plaintiff was "struck off" where he was only "suspended" as a solicitor) and see too Furniss v. Cambridge Daily News (1907) 23 T.L.R. 705 (issuing of a false invoice, report alleging issuing of an invoice he knew to be false); Mitchell et al v. Hirst, Kidd & Rennie Ltd. (1936) 3 All E.R. 872, (conviction of driving away car without owner's consent, reported as stealing car); but the Courts are more willing to intervene in this sphere, and may withdraw a case from the jury on the ground that there was no evidence of unfairness or inaccuracy to go to the jury, see Kimber v. Press Association (1893) 1 Q.B. 65; (1861 - 73) All E.R. 115: compare Leslie v. Mirror Newspapers Ltd. (1971) 45 Aust. Law Jo. R. 700.

In this area also, the legislature has intervened, and under Section 15 of The Libel and Slander Act fair and accurate reports in newspapers of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously be privileged. (Compare the U.K. Law of Libel Amendment Act, 1888, Section 3). The better view is that the Statute affords absolute privilege.

Jamaica has never adopted the U.K. Judicial Proceedings (Regulation of Reports) Act, 1926 (16 & 17 Geo. 5, Ch. 61) which restricts the publication of newspaper reports of divorce and nullity proceeedings, so that so far as the publication of such reports as that which forms the subject matter of these proceedings go, the dicta referred to in R. v. Wright (supra) continues to apply with full force.

Having carefully examined pages 76 to 77 of the Record, — which the learned trial judge in his "outline" for the summing-up deals with privilege, it appears to us that the complaints that have been made

under this head are not justified. The judge did in effect tell the jury to deal with the Defendants' report in their paper, comparing it with the Divorce Court's note of the evidence, as a whole. He might have distinguished more accurately between the question of whether the report was a fair and accurate report of what the witness said in the Divorce Court, as distinct from the question of whether what was published in the report was in fact substantially true. Some of the complaints that have been made relate to passages in which he discussed the latter problem rather than the former. In a case in which the defences of both justification and fair and accurate report of judicial proceedings are combined, it is necessary to keep this distinction before the jury. For example if the witness mis-states the dates of her husband's illness, and the press report reports the same date, while it may (or may not) affect the issue of justification, i.e. what is in truth and fact the correct date, it would not affect the question of the accuracy of the report. The complaint made before us has taken passages dealing with the issue of justification and treated them as dealing with the issue of fair and accurate report of judicial proceedings.

(d). On the issue of damages we incline to the view that the directions we have seen in the judge's "outline" summing-up were inadequate. Assuming for the moment that the jury did find (properly directed) that the sting of the libel had not been fully justified, and that the report was inaccurate because it mentioned Bellevue as the hospital, while the witness had not specified which hospital it was, we think that the jury should have been advised that the damages would lie not for imputing mental illness, treated by Dr. Royes, (with

whatever connotations that carried), for that was admitted, but only for the further suggestion that it was severe enough to warrant admission to the state mental institution rather than to a private hospital. How much this would add to the sting of proven admission to a private hospital for paranoid depression and treatment therein by the doctor in charge of the state mental institution would be the question to which the jury should have been invited to address their minds. Having regard to the view that we have come to as to the direction or non-direction on the issue of justification, and the fact that we have ordered a new trial, it is not necessary to express an opinion on the question of whether or not the damages here awarded ($2,000.00) was excessive or not, beyond noting with some interest that the Plaintiff, through his counsel, exercised his right to withhold consent to this Court assessing damages, though he complained that the damages were "small."

In the event we have allowed the appeal and ordered a new trial. The Appellant will have the costs of the appeal. The costs of the first trial will abide the result of the new trial.

I think it would be proper to express the hope that having regard to the history of this piece of "prestige" litigation, the parties will on the next occasion take the precaution of having a shorthand note made of the summing-up of the learned trial judge.

HENRY, J.A. - I agree.

MELVILLE, J.A. - I agree.