

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A NO. S-1012 of 1989

BETWEEN

LEARIE ALLEYNE-FORTE

Plaintiff

AND

**KEITH SMITH and
TRINIDAD EXPRESS
NEWSPAPERS LIMITED**

Defendants

Before the Honourable Justice P. Moosai

Appearances:

Mr. Reginald Armour for the Plaintiff

*Mr. Russell Martineau S.C. and Faarees Hosein
for the Defendants*

JUDGMENT

In this action the Plaintiff, an Attorney-at-law, is claiming, inter alia, damages for libel contained in an article headed "Wills strikes of two lawyers in murder case" and published by the Defendants on page 3 of the issue of the "Daily Express" newspaper dated May 2, 1989. The Defendants' Defence was based on the defences of absolute

privilege, qualified privilege and fair comment. In addition the Defendants denied that the words complained of bore the alleged meaning contended for by the Plaintiff or any meaning defamatory of the Plaintiff. Counsel for the Defendants, during the course of the trial, indicated that the plea of fair comment was not being pursued. The words complained of are:

“Attorney Learie Alleyne-Forte was told by the Judge it was disgraceful for him to seek an adjournment in a matter pending for nine years. He reminded the Attorney that several Judges before whom the case was called had either retired or died. ‘I am not going to be a party to wasting time even if I have to work up to midnight,’ he warned giving Alleyne-Forte three hours to prepare a brief and begin the case.”

THE EVIDENCE

The Plaintiff is an Attorney-at-law. He has a Bachelor of Arts degree and a Bachelor of Laws degree. He was admitted to practise as an Attorney-at-law on October 17, 1986. He was attached to the Chambers of Mr. Desmond Allum S. C. at No. 9A Harris Promenade, San Fernando. Mr. Winston Campbell was the Senior Advocate at the San Fernando office. On May 1, 1989 Mr. Campbell asked him to hold in a matter in which he was representing an Accused person on a charge of rape on a Legal Aid brief. He was asked to hold by Mr. Campbell for the purpose of seeking an adjournment on two grounds:

- (A) That Mr. Campbell had not been supplied with a copy of the deposition up to the morning of the matter and therefore the defence was not prepared.
- (B) That Mr. Campbell had to attend to other matters in other courts in San Fernando and he was asked by Mr. Campbell to hold for him and to indicate Mr. Campbell's position.

On the day in question Mr. Justice Aeneas Wills (as he then was) was presiding in the San Fernando Assize Court. It was the Judge's first stint in San Fernando since his appointment and members of the Southern Assembly of lawyers had gathered to welcome him to San Fernando. The entire panel of jurors was also present as it was the first day of

the month. After the welcoming speeches, the matter in which the Plaintiff was asked to hold for Mr. Campbell was called before Mr. Justice Wills.

When the matter was called the Plaintiff indicated that he was holding for Mr. Campbell for the Accused and applied for an adjournment. He indicated to Mr. Justice Wills that Mr. Campbell had not been supplied by the staff of the Sub-Registry in San Fernando with a copy of the deposition in the matter, so that he was unable to prepare the defence by that morning and, secondly, Mr. Campbell had other matters to attend to in other courts and therefore he (the Plaintiff) was holding to make the application on Mr. Campbell's behalf.

The Plaintiff also stated that he indicated to the Learned Trial Judge that the staff at the Sub-Registry had stated that the only copy of the deposition was in the possession of the trial judge and that they were hoping to make a copy of same available to Mr. Campbell on that day. It is to be noted that the records (Fly-sheet of May 1, 1989 admitted by consent) indicated that Mr. Campbell was appointed to represent the Accused since March 31, 1989. The Learned Trial Judge, **in response to the application for an adjournment**, said that it was disgraceful for the Plaintiff to seek an adjournment in a matter that was nine years old and that some of the Judges before whom the matter had earlier been called were either dead or retired. The Plaintiff then indicated to the Judge that the reason that the Defence could not begin was that they did not have a copy of the deposition to prepare the defence. The Learned Trial Judge said he would stand the matter down for a while or, as the Plaintiff's article of May 5th, 1989 stated, the said matter was stood down for reappraisal after the assessment of the other matters on the list and later adjourned to the following day. Although I have found the Plaintiff to be a credible witness, having regard to the age of the matter, I prefer to rely on what is contained in the Plaintiff's said article published on May 5, 1989, it being a contemporaneous account of what transpired and admitted by consent of both parties. After the other matters were dealt with the Judge recalled the matter and adjourned it to the following day. Mr. Campbell in fact began the trial on the following day before Mr. Justice Wills.

The Plaintiff admitted that, while he was making his application to the Judge, a reporter employed by the second Defendant was present in the court. **The Plaintiff**

denied that the Judge at any time gave him a three-hour ultimatum to prepare and begin the case in question. On the following day (May 2, 1989) the Plaintiff saw the article complained of in these proceedings. The Plaintiff said when he read the said article, he felt scandalized, ashamed and embarrassed and he was particularly struck by the omission in same, **more particularly as no reasons were given for his application for an adjournment before Mr. Justice Wills.** That was particularly noticeable to him as reasons were given in the said article in respect of other Attorneys who had made applications on that day. I pause to comment that reasons were given in respect of only one Attorney (Mr. Ernest Koylass) holding for Attorneys Mr. Travers Sinanan and Mr. Ravi Rajcoomar.

As a result of the said article, the Plaintiff said he was subjected to all sorts of disparaging comments. People called him from all different walks of life. The Plaintiff testified that he had previously been a teacher at the Hardbargain Government School. After he graduated with his Bachelor of Arts degree he was a graduate teacher at Siparia Junior Secondary School where he acted for a short while as the Vice-Principal. The Plaintiff testified that his former teachers and students called him, his colleagues at the Bar also called him. He said he was accused of wasting time in court, of not conducting himself properly. When he tried to explain his position people kept saying that they did not see that in the report.

Shortly after the publication of the said article the Plaintiff wrote a letter to the Editor of the said newspaper indicating what had happened on May 1, 1989. That article was published on May 5, 1989 under the heading "Two sides to a story" but, even so, the Plaintiff complained that there was no Editor's note stating that the Plaintiff was injured in any way nor that the earlier report was inaccurate. In addition the Plaintiff complained that the said newspaper never apologized to him even up to the day of his giving evidence in this matter. At the conclusion of the Plaintiff's testimony and, in answer to a question posed by the Court, the Plaintiff testified that after he wrote the said letter published on May 5, 1989 nobody called him.

In cross-examination the Plaintiff indicated that his complaints about the said article were firstly, the omission to provide reasons for his application for an adjournment and secondly, the inaccuracy as the Judge did not give him a three-

hour ultimatum. The Plaintiff also admitted, and this does not seem to be in dispute, that the Judge did say that he was not going to be a party to wasting time, but testified that this was said to Mr. Koylass and not to him. However, it seems to me, that nowhere in his viva voce evidence nor in his said article is complaint made about the words "I am not going to be a party to wasting time". The other witness called by the Plaintiff was Carl Quamina, a Real Estate Agent. He knew the Plaintiff from the very first day he (the Plaintiff) started working at Mr. Campbell's Chambers. He came to know the Plaintiff as he knew both Mr. Campbell and Mr. Allum. Mr. Campbell had been handling his family's business and also his business. He recalled reading the said article. After reading the said article he said he was not sure how to look at it as he was thinking about passing some work on to the Plaintiff. After reading the said article he then thought differently about the Plaintiff. In cross-examination the witness admitted that Mr. Allum and Mr. Campbell are his family's lawyers and are also his company's lawyers. In addition he admitted that the Plaintiff was never his lawyer. When cross-examined on the question of the work that he was thinking of passing to the Plaintiff, the witness said that he was not thinking of giving up Mr. Allum and Mr. Campbell. He stated further that the same time he read the said article was when he thought about passing work on to the Plaintiff. This witness also admitted reading the article written by the Plaintiff published on May 5, 1989 in the Express newspaper. The witness said that even after reading that article he would not have passed work to the Plaintiff.

Having seen and heard the witness Quamina, I reject that part of the evidence which suggested that he thought of passing work on to the Plaintiff. This witness struck me as someone who came to court to assist his friend, the Plaintiff. Additionally his testimony was not plausible as it is difficult to imagine this witness requiring the services of three lawyers. His testimony was given some nine years after the publication of the said article and one would imagine that if he did require the services of a third lawyer, that evidence would have been led or that third lawyer identified.

The other witness called by the Plaintiff was Rosemarie Dass. Miss Dass was the Court Clerk on that day (May 1, 1989). Her evidence corroborates some of what the Plaintiff is saying but, as she herself admits, she could not recall if what she wrote on the fly-sheet was all that was said that morning. For the sake of completeness the fly-sheet

endorsed on May 1, 1989 revealed (a) that Mr. Campbell was appointed on March 31, 1989 to represent the Accused; (b) that the Plaintiff was holding for Mr. Campbell; (c) that Defence attorney was not ready as he did not receive a copy of the deposition; (d) that the Attorney was informed by the Judge of the age of this matter and also that this deposition was collected by the Accused previously; (e) that sufficient time was given to the Accused; (f) that the matter was adjourned to May 2, 1989 to proceed.

That clearly was not all that transpired that morning as the said note did not record, for example, that the matter was stood down for further appraisal. Her record was therefore incomplete. In the circumstances I propose, where there are inconsistencies in her evidence vis-à-vis the Plaintiff, to rely on the evidence of the Plaintiff together with the contemporaneous record in the fly-sheet. Again, the contemporaneous note admitted by consent of both parties supplements the Plaintiff's evidence and I propose to rely on the additional matters recorded therein, in particular, that the Judge informed the Plaintiff that the deposition was collected by this Accused previously and that sufficient time was given to this Accused.

At the close of the Plaintiff's case, Mr. Martineau elected to call no evidence on behalf of the Defendants after pointing out that his efforts to subpoena both the Clerk's minute book and the Judge's minute book were unsuccessful.

THE SUBMISSIONS

As a young Attorney of three years' standing, Mr. Armour submitted that the Plaintiff was vulnerable to the traditions of the legal profession, that is, he would be expected at short notice to be asked to hold in a matter. Sometimes one would be prepared, other times one would not. He submitted that the Plaintiff was casually, carelessly, recklessly pilloried by inaccurate reporting at the hands of the Defendants.

Referring to the said article of May 2, 1989 Mr. Armour submitted that the headline "Wills strikes of two lawyers in murder case" were in bold letters designed to capture the attention of the reading public and designed to focus their attention on the fact that on that day lawyers were doing a disservice to the profession and to their clients whom they were representing. The headline sets the stage, colours a picture and influences the judgment the public would make of that group of lawyers who shamed the profession. What is significant about the references to Messrs. Koylass, Sinanan and

Rajcoomar is that the article condescends to giving details about the capacity in which Mr. Koylass appears. No one would doubt for whom Mr. Koylass was appearing. No illusion can be left in the minds of the reader that the person criticized for time-wasting and doing disservice to their client was not Mr. Koylass, who was in exactly the same position as the Plaintiff, that is, holding for colleagues.

Mr. Armour submits that the unchallenged evidence is that the admonition "I am not going to be a party to wasting time, even if I have to work up to midnight" was administered to Mr. Koylass, and not to the Plaintiff. The said article Mr. Armour submits purports to be a report, a true, fair and accurate report of judicial proceedings for which absolute privilege is claimed. In that report you have (a) a banner headline which is itself a comment about the proceedings, and a comment which colors the entire article in that it sets the Plaintiff as being one of a number of attorneys whose conduct that morning was disgraceful; (b) a report which permits itself the further comment that the Judge scolded several attorneys who were not prepared with their cases; (c) a report which permits comment that the Judge's patience was further tested when attorneys sought adjournments in the first three of the six cases called on the list; (d) an inaccurate report which carried accurately that part of the exchange between the Plaintiff and Judge, omits to report accurately the capacity in which the Plaintiff appeared that morning, and omitting to state the reason why the Plaintiff as an Attorney was asking for adjournment.

The question that the Court has to ask itself essentially is, does the defence of privilege, whether absolute or qualified, make immune a Defendant who, on these facts, has failed accurately to report the proceedings by omissions and misrepresentations and who has failed accurately to report the proceedings by adverse comment. Mr. Armour then proceeds to examine the Defence as pleaded and submits that the Defendants are relying on the defences of absolute privilege and qualified privilege. I pause here to observe that Mr. Armour did not refer to one of the defences relied upon by the Defendants, namely that the Defendants denied that the words complained of bore the alleged or any meaning defamatory of the Plaintiff. In matters in which absolute privilege is pleaded, the Defendant takes upon himself the onus of proving that the report is fair and accurate. In response Mr. Armour submitted that the sting of the alleged libel, is in the word "disgraceful".

Mr. Armour referred to the cases of **Lewis vs. Clement** (1820) 106 E.R.117; **Stiles vs. Nokes** (1806) 130 E.R.191; **Saunders vs. Mills** (1829) 130 E. R.1262; **Headley vs. Barlow** (1865) 176 E.R. 541; **Risk Allah Bey vs. Whitehurst and others** (1868) 18 L.T.R. 615.

Mr. Martineau submitted that in looking at the meaning of the words, there is only one meaning the Court has to find and that is the right meaning. The right meaning is that the Judge told the Plaintiff that it was disgraceful to ask for an adjournment in a matter nine years old. That is the sting in the said words.

With reference to the headline, that is not pleaded nor does the headline refer to the Plaintiff. In addition when the headline was read with the rest of the article, it makes it clear that the headline did not refer to the Plaintiff.

With respect to privilege, Mr. Martineau submitted that the report enjoyed both absolute privilege by statute and qualified privilege at common law. The complaint of the Plaintiff goes to the accuracy of the report. It has two limbs, omission and commission.

In looking at whether the report is fair and accurate, what the Judge said was true. The statement as to the ultimatum was not defamatory of the Plaintiff. Indeed it may be given an interpretation that is favourable to the Plaintiff.

In dealing with qualified privilege, there is no plea of malice nor could there really be one in this case.

Mr. Martineau referred to the cases of **Slim v. Daily Telegraph Ltd.** [1968] 1 All E. R. 497; **Lewis vs. Daily Telegraph Ltd.** [1964] A. C. 234; **Mapp vs. News Group Newspapers Ltd.** [1998] 2 W. L. R. 260; **Charleston vs. News Group Newspapers Ltd.** [1995] 2 A. C. 65 [H.L.]; Cigar does; **Andrews vs. Chapman** (1853) 175 E.R. 558; **Hope vs. Leng** (1907) 23 T.L.R. 243; **Alexander v. N.E.Ry.** (1865)6B&S 340; **Macdougall vs. Knight** (1886) 17 Q.B.D. 636; **Macdougall v. Knight** (1890)25Q.B.D.1; **Duncan vs. Associated Scottish Newspapers Limited** [1929] S.C. 14; **Vroman v Vancouver Daily Province Ltd.** [1941] 2 D.L.R. 456; **Turner v. Sullivan** (1862) 6 L.T. (N.S.) 130.

Those were in essence the submissions of both Counsel.

It is not disputed that the Express is a daily newspaper with a large circulation in Trinidad and Tobago. Whilst a lot of argument was centred on the headline "Wills strikes of two lawyers in murder case", I am of the view that the Plaintiff is precluded from relying on the said headline. **Gatley on Libel and Slander**, 8th edition, paragraph 1068 sets out the true position of the highly archaic, artificial and technical character of the law of libel:

" 'In a libel the words used are the material facts,' and must therefore be set out in the statement of claim: it is not enough to describe their substance, purport or effect. 'The law requires the very words of the libel to be set out in the declaration in order that the court may judge whether they constitute a ground of action' 'whether they are a libel or not.'

Paragraph 4 of the Plaintiff's Statement of Claim sets out what the Plaintiff is complaining of. Paragraph 4 states:

" On page 3 of the issue of the said newspaper for the 2nd day of May, 1989 in an article entitled "WILLS STRIKES OF TWO LAWYERS IN MURDER CASE" the Defendants falsely and maliciously printed and published of and concerning the Plaintiff and of and concerning him in the way of his profession or occupation the words following, that is to say:"

Paragraph 4 then sets out the words in the said article complained of but no mention is made that the headline is being complained of. **Gatley** (ibid.) p. 671, Precedent 1625 suggests a form of pleading when the headline and article are being complained of, namely, "by reason of the facts and matters aforesaid **the said caption** and article in their natural and ordinary meaning meant and were understood to mean..." (Emphasis added). The Plaintiff therefore cannot bring the headline into play as if it referred to the Plaintiff, as that is inconsistent with the Plaintiff's pleading.

If, however, I were wrong and the Plaintiff could rely on the said headline, I am of the view that for the reasons hereinafterstated, the Plaintiff cannot succeed in this action.

The Defendants deny that the words complained of bore the alleged or any meaning defamatory of the Plaintiff. In **Slim v. Daily Telegraph Ltd.** [1968] 1 All E. R. 497 Lord Justice Diplock stated at p. 506 that where an action for libel is tried by a judge

alone without a jury, it is he who has to arrive at a single "right" meaning as "the natural and ordinary meaning" of the words complained of. Further where a Plaintiff chooses to set out in his Statement of Claim the particular defamatory meaning which he contends was the natural and ordinary meaning of the words, the defamatory meaning so averred is treated at the trial as the most injurious meaning which the words are capable of bearing, and a Plaintiff is, in effect, estopped from contending that the words do bear a *more* injurious meaning and claiming damages on that basis. The averment does not of itself prevent a Plaintiff from contending at the trial that, even if the words do not bear the defamatory meaning alleged in the Statement of Claim to be the natural and ordinary meaning of the words, they nevertheless bear some other meaning *less* injurious to a Plaintiff's reputation but still defamatory of him. Therefore where a judge is sitting alone to try a libel action without a jury, the only questions he has to ask himself are, "Is the natural and ordinary meaning of the words that which is alleged in the statement of claim?" and, "If not, what, if any, less injurious defamatory meaning do they bear?"

I must therefore look for the single "right" meaning as "the natural and ordinary meaning" of the words complained of. And I must determine what the words would convey to the ordinary man. I must also remind myself that the Plaintiff is estopped from contending that the words do bear a *more* injurious meaning than that pleaded.

In Lewis vs. Daily Telegraph Ltd. [1964] A. C. 234, where the words complained of alleged that the fraud squad were inquiring into the affairs of the plaintiff company, Lord Reid, in his now classic judgment, stated at pp. 258 to 260:

"There is no doubt that in actions for libel the question is what the words would convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of worldly affairs... What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. **Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting**

is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning... Generally the controversy is whether the words are capable of having a libellous meaning at all, and undoubtedly it is the judge's duty to rule on that. I shall have to deal later with the test which he must apply. Here the controversy is in a different form. The respondents admit that the words were libellous, although I am still in some doubt as to what is the admitted libellous meaning. But they sought and seek a ruling that these words are not capable of having the particular meaning which the appellants attribute to them. I think that they are entitled to such a ruling and that the test must be the same as that applied in deciding whether the words are capable of having any libellous meaning...

In this case it is, I think, sufficient to put the test in this way. Ordinary men and women have different temperaments and outlooks. Some are unusually suspicious and some are unusually naive. One must try to envisage people between these two extremes and see what is the most damaging meaning they would put on the words in question. So let me suppose a number of ordinary people discussing one of these paragraphs which they had read in the newspaper. No doubt one of them might say -- 'Oh, if the fraud squad are after these people you can take it they are guilty.' But I would expect the others to turn on him, if he did say that, with such remarks as -- 'Be fair. This is not a police state. No doubt their affairs are in a mess or the police would not be interested. But that could be because Lewis or the cashier has been very stupid or careless. We really must not jump to conclusions. The police are fair and know their job and we shall know soon enough if there is anything in it. Wait till we see if they charge him. I wouldn't trust him until this is cleared up, but it is another thing to condemn him unheard.' What the ordinary man, not avid for scandal, would read into the words complained of must be a matter of impression." [Emphasis Added.]

In arriving at the natural and ordinary meaning of the words, I should therefore try and determine whether the sting is in the words themselves or whether the sting is in what the ordinary man would infer from them. Two further cases illustrate how the Court approaches its task in finding the right meaning.

In **Mapp vs. News Group Newspapers Ltd.** [1998] 2 W. L. R. 260 the defendants published an article in the newspaper **under the headline "Drug quiz cop kills himself"** which said that a police sergeant had killed himself after being ordered to provide information about ex-colleagues accused of peddling drugs, that he was custody officer with the drug squad at the London police station when eight fellow officers were alleged to have been involved in drug dealing and bribery, and that the accused officers had been transferred to other police stations while an investigation was carried out. Four of the eight officers referred to in the article issued writs for libel against the defendants, pleading that the words meant that they were guilty of drug dealing and bribery and that the sergeant had killed himself because he would otherwise have had to confirm the plaintiffs' involvement. It was **held**, inter alia, that the words complained of could not reasonably be read as imputing guilt to the plaintiffs, as contrasted with reasonable suspicion of guilt, **and the prominent reference to the sergeant's suicide did not transform them so as to bear that meaning since a reasonable reader could interpret the reference in a number of different ways**; that even if the words did impute guilt to at least one of the eight accused officers they could not impute guilt to all; and that, accordingly, the defendants were entitled to an order that the words were incapable of bearing the meaning attributed to them by the plaintiffs. Lord Justice Hirst, delivering the judgment of the Court of Appeal, stated at pp. 267 and 268:

"In my judgment, in the light of *Lewis's* case, it would be virtually unarguable to suggest that the words complained of here imputed actual guilt as contrasted with a reasonable suspicion of guilt unless, as Mr. Shields suggests, their meaning is transformed by the prominent reference to Sergeant Carroll's suicide. I do not think it has this effect since, to my mind, Sergeant Carroll's suicide could be interpreted by the reasonable reader in a number of different and perhaps more plausible ways; for example, that he himself had something to hide which would come out if he had to respond to his superior's order, or that he was overwhelmed by stress or depression. As Lord Blackburn said in a celebrated passage in **Capital and Counties Bank Ltd. vs. Henty** (1882) 7 A. C. 741, 786: "it is unreasonable that when there are a number of good interpretations, the only bad one should be seized upon to give a defamatory sense to the document."

If one imagines a conversation similar to that portrayed by Lord Reid in *Lewis's* case [1964] A. C. 234, at pp. 259 to 260 and assumes that one member of the group put forward Mr. Shield's meaning, surely others would reply: "Steady on. There might be all sorts of other explanations. Of course it makes the whole affair look much more suspicious, but we should not jump to any conclusion until we know more about the circumstances of Sergeant Carroll's death and about the progress of the investigation; and remember, the officers have only been transferred to other duties, not even suspended, let alone charged."

Consequently, I would hold that the words are incapable of imputing actual guilt, as contrasted with suspicion, to any of the eight officers.

If, however, I were wrong and it does impute guilt to at least one officer, I would find it quite impossible to think that the reasonable reader would jump to a further conclusion that it affected all eight of them, which would be essential before any of them would be entitled to rely on the suggested meaning."

Mapp's case seems to suggest that even where you have a prominent headline you have to look at the article as a whole and determine how the reasonable reader would interpret same.

Charleston vs. News Group Newspapers Ltd. [1995] 2 A. C. 65 [H.L.] suggests the correct approach to be adopted in arriving at *the* meaning. The plaintiffs were actors in a long-running Australian television serial which was also shown on British television. On 15 March 1992 the defendants' newspaper published material comprising an article with headlines, photographs and captions. The most prominent headline stated, "Strewth! What's Harold up to with our Madge?" The photographs showed the plaintiffs' faces superimposed on the near-naked bodies of models in pornographic poses. The article, which made it clear that the photographs had been produced without the knowledge or consent of the plaintiffs, castigated the makers of a pornographic computer game. On 2nd June the plaintiffs issued a writ seeking damages for libel contained in the article claiming that the photographs, on their own or coupled with headlines and captions were capable of bearing a defamatory meaning, especially in the minds of those readers, limited in number yet representing a significant proportion of millions of the newspaper's

readers, who only read headlines and looked at photographs. On the defendants' summons the master directed, on 10th November, a preliminary issue to be tried, namely, whether the publications were capable of being defamatory, either in their natural and ordinary meaning or by innuendo. The judge held that they were not. The Court of Appeal dismissed the plaintiffs' appeal.

The House of Lords **held**, dismissing the plaintiffs' appeal, that the two basic principles of the law of libel were that, where no innuendo was alleged, the natural and ordinary meaning of an allegedly defamatory publication was the meaning, including any inferential meaning, conveyed to the mind of the ordinary, reasonable and fair-minded reader and that the jury were required to determine the single meaning conveyed by the publication to the notional reasonable reader and base its verdict and damages on the assumption that the single meaning was the sense in which all readers would have understood it; **and that, although the question whether the text of an article was sufficient to neutralize an otherwise defamatory headline was a matter for the jury, a claim for libel could not be founded on a headline or photographs in isolation from the related text and the question whether an article was defamatory had to be answered by reference to the response of the ordinary, reasonable reader to the entire publication**; and that the ordinary reader could not, in the circumstances, have gained the impression that the plaintiffs were involved in making pornographic films. At p. 74 Lord Nicholls of Birkenhead states:

"The present case is well on the other side of the borderline. The ordinary reader could not have failed to read the captions accompanying the pictures. These made clear that the plaintiffs' faces had been superimposed on other actors' bodies. The plaintiffs had not themselves been indulging in the activity shown in the pictures. The ordinary reader would see at once that the headlines and pictures could not be taken at their face value. And the reader's eye needed to travel no further than the "victims" caption to the smaller photographs, and to the second sentence, at the top of the article, to find confirmation that the plaintiffs were "unwitting" stars in the sordid computer game.

Accordingly, when the ordinary reader put down the "News of the World" on 15 March 1992, he or she would have thought none the worse of the two actors

who are well known for their roles in the "Neighbours" television serial. The ordinary reader might have thought worse of the producers of the pornographic computer game, and of the "News of the World," but that is a different matter."

Charleston's case propounds that a claim for libel cannot be founded on a headline or photograph in isolation from the related text. So that the bane and the antidote must be taken together. Further, *Charleston's* case, in my view, provides a complete answer to Mr. Armour's submission with respect to *Lewis vs. Clement*. In *Lewis vs. Clement* an account of certain proceedings in a court of law was headed in a newspaper, "shameful conduct of an attorney". It then proceeded to give an account of proceedings in a Court of Law, which contained matter injurious to the Plaintiff's professional character. The Defendant pleaded that the supposed libel contained a true account of the proceedings in the Court of Law. It was **held**, after verdict for the Defendant, that the plea was bad, inasmuch as the words "shameful conduct of an attorney" formed no part of the proceedings in the Court of Law and that the Plaintiff was therefore entitled to judgment.

So in *Lewis vs. Clement* you had defamatory comments, which formed no part of the proceedings, being introduced by the reporter. In addition the headline referred to the Plaintiff. In the instant case when one looks at the headline "Wills strikes of two lawyers in murder case", the ordinary, reasonable reader can't even say that it refers to the Plaintiff. But I cannot consider the headline in isolation from the related text. By the time one reads the said article and gets to the part about the Plaintiff, it would have been quite clear that the headline was not referring to the Plaintiff. So when the ordinary, reasonable and fair-minded reader in the instant case put down the Express newspaper on May 2, 1989, he could not come to the conclusion that the Plaintiff was one of the two lawyers struck off in any murder case.

What therefore in the instant case is the single right meaning? Mr. Martineau submits that the sting in the alleged libel, if any, is that the Judge told the Plaintiff that it was disgraceful for him to seek an adjournment in a matter pending for nine years. It is conceded by Mr. Armour that the sting in the alleged libel, if any, is in the use of the word disgraceful. That being the case, I am of the view that it is not necessary for me to determine whether the words are capable of bearing the meanings alleged in the

Statement of Claim since I am of the view that the single right meaning to be attributed to the words in the said article, in so far as it referred to the Plaintiff, was that the Plaintiff was told by the Judge that it was disgraceful for him to seek an adjournment in a matter pending for nine years. That is the sting in the words. It is a lesser meaning than that alleged by the Plaintiff at paragraph 6 (a) of his Statement of Claim namely, “that the Plaintiff has acted disgracefully in the practice and conduct of his profession”, which, in my view, is the most injurious meaning that the words in the said article are capable of meaning. The meaning pleaded adds the words "in the practice and conduct of his profession". It is an embellishment of what the Judge said and is too wide a meaning. Again, imagining a conversation similar to that portrayed by Lord Reid in *Lewis's* case, one reader might say that the Plaintiff had acted disgracefully in the practice and conduct of his profession. Surely others would say, "No, no. Be fair. What the Judge in fact said was that it was disgraceful for the Plaintiff to seek an adjournment in a matter pending for nine years."

That being the single right meaning, I am also of the view that the other words complained of in the said article, namely, “ ‘I am not going to be a party to wasting time, even if I have to work up to midnight ’he warned giving Alleyne-Forte three hours to begin a brief and begin the case” are not libellous. Considered in their context, it seems to me that what the Judge was saying was that he was giving the Plaintiff three hours to prepare a brief. That would seem to suggest that the Plaintiff did not have a brief and the Judge was giving him some time to prepare one. Giving an Attorney some time to prepare a brief is clearly not libellous. That is completely different from what the Plaintiff is contending, namely, that the Plaintiff was incompetent and/or professionally negligent in that he had not prepared the brief when he should have done so, and if he were responsible, he could have prepared the brief in three hours. The point is that the ordinary reader, not avid for scandal, would say that the Plaintiff did not have a brief when he appeared in Court and the Judge gave him some time to prepare one.

Even if it could be argued that there was some defamatory imputation in the words “I am not going to be a party to wasting time”, I am of the view that it is sufficiently neutralised by the words “ giving Alleyne-Forte three hours to prepare a brief”. As Alderson B. stated in Chalmers v. Payne (1835) 2 C.M.&R.156, 159:

“But the question here is, whether the words be slanderous or not, which is a question for the jury; who are to take the whole together, and say whether the result of the whole is calculated to injure the plaintiff’s character. In one part of this publication, something disreputable to the plaintiff is stated, but that is removed by the conclusion; the bane and antidote must be taken together.”

Having determined the single right meaning and, there being no dispute that the Judge said those words to the Plaintiff and that those words were fairly and accurately reported and the other words not being defamatory of the Plaintiff, I am of the view that the said article did not bear any meaning defamatory of the Plaintiff. The further question arises as to whether the report in the said article is privileged.

It has long been held that reports of judicial proceedings attracted a qualified privilege at common law. "The rule of law is that, where there are judicial proceedings before a properly constituted judicial tribunal exercising its jurisdiction in open court, then the publication without malice of a fair and accurate report of what takes place before that tribunal is privileged": per Lord Esher M.R. in **Kimber vs. Press Association** [1893] 1 Q.B. 65 at p. 68. The common law privilege which attaches to fair and accurate reports of judicial proceedings has been supplemented by statutory provisions which confer special protection on newspapers. Section 13 (1) of the Libel and Defamation Act (hereinafter referred to as “the Act”) Chapter 11: 16 provides:

"13. (1) A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously with the proceedings, be privileged, but nothing in this section shall authorise the publication of blasphemous or indecent matter."

Section 13 (1) of our Libel and Defamation Act is in all material respects the same as the provisions of section 3 of the Law of Libel Amendment Act 1888 (United Kingdom). The privilege conferred by section 3 of the Law of Libel Amendment Act 1888 on a fair and accurate report in a newspaper of proceedings publicly heard before a Court exercising judicial authority is (if published contemporaneously) absolute and not qualified: **Gatley** (ibid.) paragraph 631. I am therefore of the view that the privilege conferred by section 13 (1) of the Act is absolute. In dealing with the issue of privilege (both absolute and qualified), I am therefore of the view that in order to be privileged, the

report published by the Defendants must be a fair and accurate account of what took place in court before Mr. Justice Wills.

It is not in dispute that the Plaintiff was told by the Judge it was disgraceful for him to seek an adjournment in a matter pending for nine years and that several judges before whom the case was called had either retired or died. And it is not disputed that the Judge did not give the Plaintiff three hours to prepare a brief and begin the case. It is to be noted that in the Plaintiff's Reply in response to the Defendants' contention that the report was a fair and accurate report, the Plaintiff does not rely on the words "I am not going to be a party to wasting time, even if I have to work up to midnight" as being inaccurate or unfair. Indeed in cross-examination when the Plaintiff is shown the said article and asked what are his specific complaints, he makes no complaint about the words "I am not going to be a party to wasting time, even if I have to work up to midnight". Again in the Plaintiff's said article published on May 5, 1989 the Plaintiff sets out his specific complaints but no complaint is made with respect to the Judge's remark aforesaid. I also note at this stage that, in response to the Defendants' defence of qualified privilege, there is no express plea of malice in the Plaintiff's Reply.

In addressing the issue of privilege, the Plaintiff complains that:

- (A) The report omitted to state that he was holding for Mr. Campbell.
- (B) The report omitted to state the reasons for his application for an adjournment.
- (C) The Judge did not give him three hours to prepare a brief and begin the case.

So that essentially the Plaintiff complains of two omissions and an inaccuracy.

Gatley (ibid.) summarises the position with respect to a fair and accurate report in the area of privilege at paragraph 604:

"In order to be privileged the report must be a fair and accurate account of what took place in court. It is not necessary that it should be verbatim; an abridged or condensed report will be privileged, provided it gives a correct and just impression of what took place in court. It is sufficient to publish 'a fair summarised account.' '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.' "

The cases hereinafter cited provide some guidance as to the manner in which the Court should go about its task in determining what is a fair and accurate report.

In **Andrews vs. Chapman** (1853) 175 E.R. 558 Lord Campbell Chief Justice stated at p. 559:

"This is an action for a libel contained in what purports to be a report in a newspaper of the proceedings in a Court of Justice, and I must say that as to one part of it, the introductory part, it contains some things of which I cannot exactly approve. By the law of England a fair account of what takes place in a Court of Justice may be published, but the reporter who gives the account ought not to mix up with it comments of his own; and if any comments are made, they should not be made as a part of the report. The report should be confined to what takes place in Court, and the two things, report and comment, should be kept separate. In this report there are not only the observations of the Lord Chancellor, which are proved to have been truly given, but there is a detailed account of proceedings which had previously taken place, intermingled with comments on those proceedings which certainly ought not to have appeared there. If there had been simply the account of what the Lord Chancellor had said, inasmuch as the account appears to be entirely correct, the defendant would have had nothing to do but to plead not guilty, and to show that the report was a fair report of what taken place; and although it is possible that all that the Lord Chancellor said is not inserted, it is clear that the substance of what he said is inserted, and 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. However 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."

Andrews vs. Chapman seems to suggest that if the whole of the report is a substantially accurate account of what took place, then the report is privileged. So that it is not necessary to set out every word of the report.

In Hope vs. Leng (1907) 23 T.L.R. 243 W, a witness, shouted out from the well of the court that the evidence given by the plaintiff was "a pack of lies."

It was held by the Court of Appeal that the report of the proceedings in which this observation appeared was nevertheless privileged. Collins M.R. at p.244 stated:

"The learned Judge, in language which he could not attempt to improve upon, and in which he entirely concurred, put before the jury the position of the reporter for a daily newspaper whose function it was to make a fair report of proceedings in a Court of Justice, the report coming, not necessary from the hands of a trained lawyer, but from a person whose function it was to send a report in order that the public might read it on the next day. These considerations ought to be taken into account, as the learned Judge pointed out to the jury, when they were dealing with the question whether a report was fair from the standpoint of the person who wrote it. The learned Judge said: -- "I think juries would be very wrong if they were to be too severe on them" -- i.e., reporters -- "if there happens to be some slight flaw, if there is something which they think would have been better put in a different way. But if in the main it is an accurate report, and you do not think it would do any harm to the parties, I think a jury should protect them by saying that they fail to see that it has been proved that the account was not a fair and accurate report of what took place in a Court of Justice." He entirely agreed with the way in which the learned Judge had advised the jury as to the attitude which they ought to take up with regard to this case. The question, therefore, came to this -- was there any evidence for the jury? Mr. Justice Grantham was thoroughly dissatisfied with the verdict, and he (the Master of the Rolls) was not satisfied with it himself. But that was not enough to justify the Court in setting the verdict aside and entering judgment for the defendants if there was evidence fit to be considered by the jury. The real question, therefore, was

whether there was evidence upon which a reasonable jury properly directed could find that this report was unfair so as to be actionable. He had come to the conclusion that there was no evidence fit to be left to the jury upon that point. The report was a report in a daily newspaper, and it was not to be judged by the same standard of accuracy which would be adopted if they were criticizing a law report of a professional law reporter. It must be regarded from the standpoint of persons whose function it was to give the public a fair account of what had taken place in a Court of Justice. It would, he thought, be wrong to judge it by the exact standard of accuracy which would be expected in a report purporting to come from the hand of a trained lawyer."

In looking at the said article, I must look at it as if it was coming from a reporter whose function it was to send a report in order that the public might read it on the next day, and not from the hands of the trained lawyer.

In **Macdougall vs. Knight** (1886) 17 Q.B.D. 636 the defendants published in the form of a pamphlet a report of the judgment delivered in a former action which the plaintiff had brought against them. The pamphlet contained no separate report of the evidence given at the trial, and there were passages in the judgment reflecting on the plaintiff's character. In an action for libel in respect of such publication the jury found that the pamphlet was a fair, accurate, and honest report of the judgment, and was published bona fide and without malice. It was held that it was not necessary to ask the jury whether the pamphlet was a fair report of the trial, that the right questions had been left to the jury, and the defendants were entitled to judgment on the findings.

Macdougall's case seems to suggest that you can publish a fair and accurate report of a judgment without dealing with the evidence given at the trial. It would follow from that that you would be able to publish a fair and accurate report of what a Judge said without reporting on what Counsel said. At pp. 639 and 640 Lord Esher M.R. stated:

"If the trial lasts for several days, all the same people would not be in Court on the different days, and in such a case if a fair report of all that takes place on any one day is published, the readers of that report are placed in the same position as if they had been in Court on that day and had heard the proceedings. If a fair report of any one distinct part of the trial is published the publication is

justifiable, and therefore a fair report of the whole of one day's proceedings is privileged, even if the result is that the publication bears hardly on the character of an individual, who may be in a position at a later stage to answer all that is brought forward against him. If a part of what takes place on a particular date is published as the whole of the day's proceedings, such a publication does not put people who have not been in the Court in the same position as those who heard the case in Court, and therefore is not a fair publication."

It is therefore permissible to publish a report of what transpired in a trial on a particular day. So that a fair report of the whole of one day's proceedings is privileged, even if the result is that the publication bears hardly on the character of an individual.

Continuing at p. 642 Lord Esher M.R. stated:

"In my opinion the word "fair," when used with regard to such a publication as we are discussing, is equivalent to fairly correct; whether a person's mind is fair is involved in the question whether the publication is bona fide. The question as to fairness arises only when the report is not "literatim et verbatim;" if it is so no such question can arise. It has been decided, as I have observed, that a report of one day's proceedings may be published, and in the same way the judgment is quite a separate part of the proceedings. **Suppose the judgment to be erroneous**, still the people who are not in Court, but who read the report, are put in the same position as those who were in Court and heard the judgment delivered. **The responsibility for the accuracy of the judgment rests on the judge who delivers it, not on the person who publishes the report of it.**"

[Emphasis added.]

Later on Lord Justice Bowen, in dealing with the question of malice, opined at p. 642:

"I think also that a report of a portion of the case, if correctly given, is privileged, but if it is published maliciously the privilege is destroyed. In the case of a newspaper the publication of proceedings from time to time without malice is undoubtedly privileged; yet it does not by any means follow that a person might publish a true report of a part of the proceedings, if he did so maliciously."

So that a fair and accurate report of the judgment of a Judge is privileged even if that judgment is erroneous. Indeed in Anderson vs. Gorrie [1895] 1 Q.B. 668 it was held that no action lies for acts done or words spoken by a judge in the exercise of his judicial office although his motive is malicious and the acts or words are not done or spoken in the honest exercise of his office.

Mr. Armour submits that the decision of the Court of Appeal was varied when the House of Lords (1889)14 A.C.194 considered the matter. However **Gatley** (ibid.) at paragraph 611 footnote 96 sets out the true effect of the decision of the House of Lords:

“ Though the decision was affirmed by the House of Lords on other grounds, doubts were expressed by Lord Halsbury L.C. (at p.200) and Lord Bramwell (at p.203) as to whether the publication of a summing-up or judgment was privileged if unaccompanied by the evidence on which it was founded. These doubts are referred to in Macdougall v. Knight (1890)25Q.B.D.1, an action between the same parties for the publication of another part of the same judgment. The Court of Appeal firmly upheld their judgment in the former action, Lopes L.J. observing that “there is no decision of the House of Lords which impeaches the law as laid down in the court in the previous action between the same litigants. There are reservations of opinion by two of the learned lords, but such reservations cannot be taken as in any sense decisions.”

In Duncan vs. Associated Scottish Newspapers Limited [1929] S.C. 14 the chairman of a parish council brought an action for damages for slander in a Sheriff Court against a member of the council in respect of statements made by the latter concerning him. The Sheriff-substitute held that the statements complained of had been made and were false and calumnious, but that the occasion was privileged and that malice had not been proved; and he assoilzied the defender. On appeal the Sheriff adhered. A newspaper published an account of the decision, which, after stating the names, designations, and the addresses of the parties, proceeded -- "The pursuer was chairman of Livingstone Parish Council, and the defender was a member of the Council, at a meeting of which the slander was alleged to have been made during a discussion on unemployed relief. Sheriff-substitute Robertson found that the pursuer had failed to prove facts and circumstances, and assoilzied the defender, with expenses. Sheriff Crole had adhered to

the Sheriff-substitute's decision, and found the pursuer liable to the defender in expenses."

The unsuccessful pursuer in the Sheriff Court action brought an action against proprietors of the newspaper for damages for slander. He averred that the report gave a false and misleading account of the judgments, and falsely and calumniously represented that he had failed to prove that the words used by the defender in the Sheriff Court action were false or calumnious. He also averred that his neighbours and friends, who were aware of the nature of the statements made concerning him and of the action brought by him, understood the report to mean that the statements made were in fact true.

It was **held** that the report was not reasonably capable of bearing the innuendo sought to be placed on it by the pursuer and the action was dismissed.

After summarising the pursuer's averments and quoting the newspaper paragraph complained of, Lord Morison, the Lord Ordinary, stated at pp. 16 and 17:

"It is this paragraph which forms the ground of the present action. It is not alleged that any statement in it is false. The pursuer's complaint regarding it is not in respect of what it says, but because of what it omits. Mr. Graham Robertson admitted that, if the paragraph in question was read by a lawyer, he would necessarily understand that the pursuer's action had failed because malice had not been proved. But he argued that the persons among whom the pursuer lived were not lawyers, that they knew the circumstances under which the pursuer had raised his action, and were familiar with the serious accusation which had been made against him, and that, in the absence of any express reference to the fifth and sixth findings contained in the Sheriff-substitute's interlocutor, they and others read the paragraph as implying that the pursuer had failed to prove the falsity of the accusation made against him, and that he remained under the stigma which it necessarily involved. The defenders contended that the paragraph was incapable of bearing any libellous construction, and that it meant no more than that the Sheriffs had decided the pursuer's action of damages for slander adversely to him. It is necessary, I think, to consider, in the first instance, from what point of view the paragraph falls to be construed.

Probably there are always people whose imagination or knowledge or ignorance or prejudice will induce them to place a sinister interpretation upon something in any newspaper report of a libel action, and there is ample scope for extracting innuendoes from the report among the partisans of two Parish Councillors, who are the litigants concerned. But reports of judicial proceedings are issued by the newspapers to the general public and, **so long as they are fair and accurate reports of what they profess to report, then, in my opinion, no action lies upon them....**

It has to be kept in view that here the newspaper professed only to give an account of the judgments pronounced by the Sheriff and the Sheriff-substitute respectively, and it is not suggested that they were incorrectly set forth. In my opinion, the paragraph means and can mean only that the pursuer failed to prove his case of alleged slander before the Sheriff-substitute, and that the Sheriff dismissed the appeal and affirmed his Substitute's judgment. I am quite unable to hold that there is anything in this report which is either unfair to the pursuer or capable of a sinister imputation against him. I quite see that the pursuer might have preferred that the material contained in the Sheriff-substitute's fifth finding should have been incorporated into the report. But the omission of this finding does not make the report of the Sheriff-substitute's judgment unfair, nor does the omission, in my view, affect or qualify the plain meaning of the words published. [Emphasis added.]

On appeal before the Second Division Lord Justice-Clerk stated at p. 18:

"Now, the report of which complaint is made, and which purports to deal with the result of this action, is headed: " Alleged Slander. Appeal by Blackburn Man Fails," and it goes on to say -- and this is the sting of the passage, if there is any sting -- "Sheriff-substitute Robertson found that the pursuer had failed to prove facts and circumstances, and assoilized the defender, with expenses." That probably is not an entirely satisfactory report. The reference to "facts and circumstances" is not very intelligible. The report should either have stated that the pursuer had failed to prove facts and circumstances from which malice might reasonably be inferred, or it should have left the phrase alone.

But we are not embarrassed by any consideration arising out of... of that phrase, because Mr. Cameron frankly admitted to me, in the context of the discussion, **that one may treat this case upon the same footing as if the paragraph had borne that the pursuer had failed to prove his case and that the Sheriff assoilzied the defender. And that obviously to my mind, is the meaning of the paragraph, and the only meaning which can reasonably bear, viz., that the pursuer's action had failed -- nothing more and nothing less -- and that in point of fact is unquestionable.**"[Emphasis Added.]

Dealing with omissions Lord Justice-Clerk continued at pp. 18 and 19:

"Indeed, quite frankly again, Mr. Cameron stated his complaint in this case was with regard to the incompleteness of the report. He complains not of anything which it contains, but he complains of what it omits. And when Mr. Cameron was asked what was the omission of which he complained, I gathered that his answer was that the omission was an omission on the part of the reporter to state that the Sheriffs had both found that the words alleged to have been used by the defender were used by him, but that, in respect the occasion was a privileged one, the pursuer's action had failed. Well, it seems to me logically and inevitably to follow from that argument that, where a newspaper reports an action of damages in which the defence of privilege is tabled, and where the judge who determined that action held that the words attributed to the defender were used, but that, as they were used on a privileged occasion, the defender succeeds, in every action of that kind a newspaper will be liable to pay damages, **even though it merely bears to relate the result of the action,** unless it asserts in terms and accurately (first) that the words were proved to have been used, and (secondly) that in respect of privilege the action had failed.

That appears to me to be an extravagant proposition, which, in the circumstances of this report, is peculiarly unwarrantable, because your Lordships will observe that the report does not bear to be a report of the proceedings in the action. **This report merely bears to be a report of the result of the action. And to suggest that, where a newspaper merely purports to report the result of a case, and does so with entire accuracy, it may be liable in damages**

because it has failed to relate the steps which led up to that judgment, seems to me to be a proposition which will not for a moment bear examination.

[Emphasis added.]

So that it is not necessary to set out every word of the evidence, nor the speeches of Counsel, nor the submissions of Counsel. One must look to see whether they are a fair and accurate report of what they profess to report. In *Duncan's* case, the report was not a report of the proceedings in the action. It was a report of the result of the action and the result was accurately stated. Accordingly the newspaper could not be liable because it omitted to state the grounds on which the pursuer failed.

In the instant case the Plaintiff's complaint is that the said article omitted to state that he was holding for Mr. Campbell and omitted to state the reasons for his application for an adjournment. However the report in the said article, in so far as it related to the Plaintiff, professed to be a report of what the Judge, Mr. Justice Wills, said. It did not deal with submissions of Counsel. And it is not disputed that Mr. Justice Wills told the Plaintiff that it was disgraceful for him to seek an adjournment in a matter pending for nine years and that several judges before whom the case was called had either retired or died. This is in direct contrast with what was reported earlier on in the said article with respect to Mr. Koylass. The report with Mr. Koylass professed to be a report of the submissions of Counsel on both sides (Mr. Koylass and Mr. Carmona), and the result of Mr. Koylass's application for an adjournment.

In **Turner v. Sullivan** (1862) 6 L.T. (N.S.) 130 the Plaintiff was a Solicitor who had been charged with improper conduct with a young lady who had applied to the magistrate of the petty sessions, for an affiliation order. A gentleman named Voules appeared on her behalf.

The reporter of the case headed his report "Extraordinary application case against a London Solicitor," and commenced it by saying, "Mr. Voules appeared on the part of Miss Elizabeth Geraldine Stokes," where he broke off, and commencing a new line, went on to say, "It was a case of violation under somewhat extraordinary circumstances;" which it was alleged, on the part of the Plaintiff, was libellous, and was not intended to be read as Mr. Voule's opening. Mr. Justice Byles in dealing with this point stated at page 130:

“With regard to the first point, the magistrate’s clerk who was called for the Plaintiff; said that the word “violation” was used by one of the magistrates, and not by Mr. Voules, **therefore that was a mistake, and if a mistake it was not libellous, and unless a fair and reasonable latitude was given there would be no safety in reporting the proceeding in courts of justice and in Parliament.**”[Emphasis added.]

By analogy in the instant case the reporter wrongly attributed a remark made by Mr. Justice Wills to Mr. Koylass as being made to the Plaintiff namely, “ I am not going to be a party to wasting time”. That was an inaccuracy or mistake as there is no dispute that the reporter was present in Court nor has any charge been made of any sinister or improper motive on the part of the reporter. In any event the Plaintiff makes no complaints about those words insofar as they are unfair or inaccurate and, as I have already found, these words are not libellous.

Vroman v Vancouver Daily Province Ltd. [1941] 2 D.L.R. 456 is instructive as to the manner in which a court should deal with an inaccuracy. In this case, the Plaintiff failed in an action for libel, tried by a Judge sitting without a jury, based upon the headline of an accurate report of a judicial proceeding wherein a committal order had been made against the plaintiff for non-compliance with an order relating to the payment of alimony to the plaintiff’s divorced wife, the headline erroneously stating: “Husband Jailed On Wife’s Plea.” The committal order had been made on improper material and was revoked the day after publication of the article in the defendant’s newspaper. It was **held** that the Plaintiff’s appeal must be dismissed.

At page 456 Mr. Justice of Appeal McDonald delivering the judgment of the British Columbia Court of Appeal stated at pages 456 to 458:

“This is an appeal from a judgment of Chief Justice Morrison wherein the appellant’s action for libel against the respondent newspaper was dismissed. The words complained of are:

“*Vancouver Today*
“HUSBAND JAILED
ON WIFE’S PLEA

“Committal for forty days to Oakalla jail was ordered by Mr. Justice Manson in Supreme Court of Clinton Harry Vroman, dentist, 4446 Dunbar, on the application of Mrs. Clara Vroman, 2831 West Third, who divorced him in 1933.

“The committal was ordered for Vroman’s failure to obey an order of the court requiring him to file a statement of receipts and disbursements in connection with payment of forty-five dollars (\$45.00) per month alimony to Mrs. Vroman.”

The facts were that the committal order in question had in fact been made and the Sheriff had been ordered to take the body of the appellant into custody. It turned out, however, that through a mistake which had occurred in the Supreme Court Registry the order was made on improper material, and when the mistake came to light on the following day the order was revoked. The appellant’s complaint is that the headline of the article conveys the information that he had in fact been taken bodily to gaol and confined there. Upon consideration I think the article is not defamatory. Inasmuch as the headline designates no individual it means nothing until read with the article itself, and any reasonable person reading the article would see precisely what had happened. **After all, it is the imputation that a man has been found guilty of an offence and sentenced which defames him, and not the statement that the sentence had been executed.** For instance, I do not think it would be defamatory to publish of a prisoner sentenced to life imprisonment, that he had been taken to New Westminister to enter upon his sentence, when actually he was not to go to New Westminister until the following day. I do not think that under the circumstances here a reasonable man reading the publication would be likely to understand it in a libellous sense...

Here there was no substantial difference between what was reported and what was actual truth. The whole sting lay in the truth, viz., that the applicant had had a committal order made against him.

It is important to keep in mind, I think, that we are dealing here, not with a case of “justification”, but solely with the question of whether we have a fair and accurate report of a judicial proceeding, there being of course no suggestion of malice. Two leading cases may be referred to as indicating how the Courts have looked upon inaccuracies in such reports.”

Macdonald J.A. then referred to Hope v. Leng & Co. (1907), 23 T.L.R.243 ,one of the cases cited earlier in my judgment ,and continued at pp.458 and 459:

“Perhaps a stronger case against the appellant is Alexander v. North Eastern R. Co., 6 B. &S. 340, 122 E.R. 1221. The railway company had published a notice stating that the Plaintiff had been convicted by Justices of an offence against the company’s bye-laws and fined, with an alternative of three weeks’ imprisonment. The alternative in the conviction was in fact 14 days. It was held that it was a question for the jury whether the statement charged as libellous was or was not substantially true, and that the inaccuracy did not as a matter of law make the statement necessarily libellous, that the conviction was described with substantial accuracy and truth in the statement complained of. Cockburn C.J. at p. 343 said: “The case resolves itself into a question of degree of accuracy, which is for the jury,” And Blackburn J. at p. 344: “The substance of the libel is true: the question is whether what is stated inaccurately is of the gist of the libel.” Chief Justice Cockburn’s charge to the jury in Gwynn v. South-Eastern R. Co. (1868), 18 L.T. 738 is to the like effect.

The language used in **Alexander’s** case I think exactly fits the present case, **and I would hold that the learned Chief Justice sitting as a jury must be presumed to have held that the report was substantially accurate, that what is stated inaccurately is not the gist of the libel and that it did not mislead the public mind.**” [Emphasis Added.]

Again applying the reasoning in *Vroman’s* case, the whole sting of the alleged libel, if any, in the instant case is the Judge saying that it was disgraceful to apply for an adjournment in a matter nine years old. So that there was no substantial difference between what was reported and what was actual truth. The whole sting lay in the truth. In the instant case do the omissions and inaccuracy go to the gist of the alleged libel? I am of the view that the omissions and inaccuracy do not go to the gist of the alleged libel. The Judge considered the application for the adjournment in the light of the factual matrix before him. This factual matrix showed:

- 1) That Mr. Campbell was appointed on March 31, 1989 to represent the Accused.

- 2) On May 1, 1989 an application was made by the Plaintiff for an adjournment on two grounds namely, (a) that Mr. Campbell had not been supplied with a copy of the deposition up to the morning of the matter so that the defence was not prepared; (b) that Mr. Campbell had to attend to other matters in other courts in San Fernando and the Plaintiff was asked by Mr. Campbell to hold for him and to indicate his (Mr. Campbell's) position.
- 3) That the deposition was collected by the Accused previously and that sufficient time had been given to this Accused. The Judge informed the Plaintiff of this.

In that factual matrix, it seems to me that the Judge was well apprised of all the facts when the Plaintiff applied for the adjournment. So apprised, the Judge still came to the conclusion, in response to the application for an adjournment, that it was disgraceful for the Plaintiff to apply for an adjournment in a matter that was nine years old. The Judge giving the Plaintiff three hours to prepare a brief does not, in my view, go to the gist of the alleged libel. Giving an Attorney some time to prepare a brief is, as I have already found, clearly not disgraceful conduct nor is it libellous. Defamatory matter therefore has not been introduced by the reporter.

Does the omission to state that the Plaintiff was holding for Mr. Campbell go to the gist of the libel? An Attorney holding for another Attorney really stands in the shoes of that Attorney for all intents and purposes. There are occasions when the Attorney who is holding gets stuck with a bad application and the Court, for example, directs that he begin the case. Attorneys in such a scenario are expected to prepare the case beforehand and to be in a position to proceed. Having regard to the factual matrix it would seem that the Judge was certainly entitled to come to the conclusion that it was disgraceful to apply for an adjournment in a matter that was nine years old. Here is an Accused who has collected the deposition personally. Mr. Campbell is appointed on March 31, 1989. On May 1, 1989 the Plaintiff, holding for Mr. Campbell, applies for an adjournment on the basis, inter alia, that Mr. Campbell does not have a copy of the deposition. Surely communication should have taken place between the Accused and Counsel between March 31, 1989 and May 1, 1989. That might very well have revealed that the Accused had collected the deposition previously. If Counsel were unaware of same, then surely

that would have been the subject of comment by Counsel when this was drawn to his attention by the Judge on May 1, 1989. Even though the Plaintiff felt that he had a legitimate complaint, and however sympathetic a Court may feel, his recourse is not in the law of libel.

I am therefore of the view that the Defendants have satisfied me that the report in the said article, in so far as it related to the Plaintiff, was a fair and accurate report of what took place in court. Accordingly by virtue of s.13 (1) of the Act the report in the said article is privileged. In addition the report is entitled to a qualified privilege at common law, there being no express plea of malice and there being no other evidence that the Defendants published the report maliciously.

The Plaintiff's action is therefore dismissed with costs to be paid by the Plaintiff to the Defendants certified fit for Senior Advocate Attorney.

Before concluding my judgment I am deeply indebted to both Counsel for their assistance and extensive research.

Dated this 17th day of September, 1999.

PRAKASH MOOSAI
JUDGE