

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. S-862 of 1999

Between

**TRINIDAD AND TOBAGO NATIONAL PETROLEUM
MARKETING COMPANY LIMITED**

Plaintiff

And

TRINIDAD EXPRESS NEWSPAPERS LIMITED

Defendant

Before the Honourable Madam Justice Maureen Rajnauth-Lee

APPEARANCES:

Dr. Fenton Ramsahoye Q.C. for the Plaintiff, instructed by Mr. Anand Ramlogan.

Mr. Alvin Fitzpatrick S.C. for the Defendant, leading Mr. Faarees F. Hosein
instructed by Mrs. Carolyn Ramjohn-Hosein.

Dated the 11th March, 2002.

J U D G M E N T

INTRODUCTION

The Trinidad and Tobago National Petroleum Marketing Company Limited
(popularly known as “N.P.” and hereinafter referred to as “**the Plaintiff**”) is a

state-owned corporation duly registered and carrying on business in the sale and distribution of petroleum and petroleum products in Trinidad and Tobago with its registered office at NP House, Sea Lots, Port of Spain.

The Trinidad Express Newspapers Limited (hereinafter referred to as **‘the Defendant’**) is a company duly incorporated and carrying out business as the printer and publisher of the “Daily Express” Newspapers which has a wide circulation in Trinidad and Tobago.

At page 3 of the said Newspapers dated Tuesday the 23rd March, 1999, the Defendant published the following article under the headline **“N.P. dismisses dealers’ claims”** by Siewdath Persad:

“THE NATIONAL Petroleum Marketing Company (NP) has dismissed claims by the Petroleum Dealers Association (PDA) that their books were cooked in declaring a \$42 million (after tax) profit for 1997/1998.

The PDA said the figure “must be under question” because information it has “suggests that NP has conveniently included the collection of Road Improvement Tax in its profit margin and also the company is owing over \$45 million to the Comptroller of Customs and Excise”.

Additionally, the PDA stated: “No money has been spent over the last two years in replacement of underground storage tanks and the upgrade of dilapidated service stations.”

In response to the allegations, NP said the Road Improvement Tax “is not included” in the company’s profit margin and the tax “is remitted to Government every 30 days”.

The company also said its 1997/1998 annual report showing a \$60 million (before tax) profit fully accounts for any money owed to the Customs and Excise Department “would not be in excess of the stipulated 30-day period” because the excise tax first has to be collected from sales before it is paid up.”

The Article is hereinafter referred to as **“the Article”**.

THE PLEADINGS

On the 26th August, 1999, by a Writ of Summons (accompanied by a Statement of Claim) issued out of the Sub-Registry, San Fernando, the Plaintiff claimed against the Defendant damages for libel in respect of the following words contained in the Article:

“THE National Petroleum Marketing Company (NP) has dismissed claims by the Petroleum Dealers Association (PDA) that their books were cooked in declaring a \$42 million (after tax) profit for 1997/1998. The PDA said the figure “must be under question” because the information it has “suggests that NP has conveniently included the collection of Road Improvement Tax in its profit

margin and also the Company is owing over \$45 million to the, Comptroller of Customs and Excise.”

By paragraph 4 of its Statement of Claim, the Plaintiff alleged inter alia that "the said words meant and were understood to mean that the corporation was falsely inflating its profits by treating as trading revenue Road Improvement Tax collected by the Corporation and which is the property of the Government and people of Trinidad and Tobago and further that the corporation is trading in breach of the law by improbably failing to pay to the Comptroller of Customs and Excise the sum of \$45 Million owing by the Corporation on account of duties to prejudice of the Government and people of Trinidad and Tobago."

On the 5th November, 1999, the Defendant filed its Defence denying inter alia that the words contained in the Article and set out in paragraph 3 of the Statement of Claim bore or were capable of bearing any of the meanings alleged in paragraph 4 of the Statement of Claim or any other meaning defamatory of the Plaintiff.

On the 5th October, 2001, the Defendant amended its Defence to include the following contentions:

- (i) That the Defendant is entitled to certain constitutional freedoms, namely freedom of the press and freedom of expression, and in the exercise of such freedoms published the words set out in paragraph 3 of the Statement of Claim. Accordingly, the Defendant contends that the Plaintiff is not entitled to maintain the action because the

maintenance of the action will place an undesirable fetter on the free exercise of the freedoms of expression and of the press. The facts and matters on which the Defendant relies in support of this plea are particularised at paragraph 2 of the Amended Defence.

- (ii) That the publication of the Article was an occasion of qualified privilege. The facts and matters on which the Defendant relies in support of this plea were set out in the particulars under paragraph 7 of the Amended Defence.

THE UNDISPUTED FACTS

The following undisputed facts were agreed:

- (1) The Plaintiff is a duly registered company under the Companies Ordinance Chapter 31 No. 1 and continued under the Companies Act 1995.
- (2) The Plaintiff is a trading corporation carrying on business in the sale and distribution of petroleum and petroleum products.
- (3) The Plaintiff is wholly owned by the State. More precisely, the shares of the Plaintiff are vested by and large in the Minister of Finance as corporation sole pursuant to the Minister of Finance (Incorporation) Act Chapter 69:03. Pursuant to section 3 (1) of the Act, all property vested in the Minister by the Act shall be held in trust for the State.
- (4) The Plaintiff's Board of Directors is appointed by the relevant Minister of Government who can remove them at will. In this regard, the Minister is

like any other shareholder exercising his right of removal of any member of the board.

- (5) The Board of Directors is subject to the policy directions of the Government of the day through the relevant Minister. The ultimate weapon of control where the Board fails to carry out the policy directions of the Government of the day is removal of the members of the Board.
- (6) The operations of the company are managed and run by its permanent staff who are not public servants.

THE ISSUES

I propose to consider the three (3) main issues arising in this case in the following order:

- (1) *Can the Plaintiff maintain an action in libel?*
- (2) *Whether the words were published on an occasion of qualified privilege.*
- (3) *Whether the Article is libellous at all.*

Although I am aware that a determination of the third issue can dispose of the entire matter, I am minded to deal with the Issues at (1) and (2) having regard to their importance to the parties.

(1) **CAN THE PLAINTIFF MAINTAIN AN ACTION IN LIBEL?**

Senior Counsel for the Plaintiff submitted that freedom of expression as protected by the Constitution of Trinidad and Tobago is in essence the freedom to publish without prior restraint: *a constitutional*

guarantee to publish a censorship. The freedom to criticise public officials and elected bodies, it was argued, is a feature of representative democratic government. He further submitted that the law was aimed at ensuring that the public should be able to subject elected bodies and officials to free and uninhibited criticisms.

Senior Counsel for the Plaintiff submitted that to allege that the Plaintiff has all the characteristics of a government body cannot be correct since it is a limited liability company and, like Petrotrin and National Fisheries, does not carry out a public function or a public duty and is not subject to judicial review. [See *High Court Action No. 536 of 1995 - Industrial Risks Consultants Limited and another -v- Petroleum Company of Trinidad and Tobago Limited and High Court Action No. S-1947 of 1992 - Bruno Maharaj and other -v- National Fisheries Company Limited*]. He argued that the Plaintiff is essentially a trading company carrying out trading functions. Like other limited liability companies, the Plaintiff has a trading reputation to protect. See *South Hetton Coal Company Limited -v- North Eastern News Association [1894] 1 Q.B. 133, 143-7.*

In his submission, a governmental body is one which originates from and is created by democratic representative government and the cases generally deal with representative bodies are public officials representing them. In his submission, it would be necessary for the Court to

have some kind of precedent/authority in order to raise the bar to the Plaintiff's suit. In this regard, the Court agrees with the submission of Senior Counsel for the Plaintiff and adopts the view expressed by Buckley J., in the case of *Goldsmith –v- Bhoyrul [1998] QB 459 at p.462, letter C:*

“To use what the Court may regard as the public interest to prevent a legal person, individual or corporate, from suing for libel if it might otherwise have that right is an undertaking that requires great caution.”(emphasis mine)

On the other hand, Senior Counsel for the Defendant submitted that the genesis of the principle of withholding the right to sue is that it is *“in the public interest”* in a free and democratic society that there should be free and unfettered criticism of governmental bodies and public officials in the exercise of the right of freedom of expression.

Senior Counsel for the Defendant reiterated that the principle was founded on the *“public interest”* test and not on any particular category of individuals or bodies. In his submission, broadly speaking, one of the governmental functions is to *“operate”* or *“run”* state owned bodies on behalf of the public. In effect, the government has been elected by the people to *“operate”* and *“run”* state owned companies, he argued.

In his submission, it is a question for the Court as a matter of law whether it is or is not in the public interest that the Defendant should have

the right to criticise how the Plaintiff's assets are being managed, when the assets of the Plaintiff are being held by the State on behalf of the people of Trinidad and Tobago.

Senior Counsel for the Plaintiff and for the Defendant both relied on the case of *Derbyshire County Council –v- Times Newspapers Limited and others* 1993 A.C. 534, in which Lord Keith traced the history of the right to sue and the withholding of that right from certain individuals or bodies.

In the United States, the “*absolute privilege*” of the citizen to criticise an inefficient or corrupt government without fear of civil as well as criminal prosecution is “*founded on the principle that it is advantageous for the public interest that the citizen should not in any way be fettered in his statements, and where the public service or due administration of justice is involved he shall have the right to speak his mind freely*” [per Thompson C.J. in *City of Chicago –v- Tribune* (1923) 139 N.E. 86 at p. 90.].

According to Lord Keith in *Derbyshire*, the public interest considerations which underlaid the provision of the American Constitution concerned with securing freedom of speech, are no less valid in the United Kingdom [page 548].

Noting that in the United Kingdom, a number of departments of central government are statutorily created corporations, including the Secretaries of State for Defence, Education and Science, Energy, Environment and Social Services, Lord Keith in considering whether such

statutory corporations and local authorities should maintain a suit in libel remarked as follows at page 549:

“In both cases I regard it as right for this House to lay down that not only is there no public interest favouring the right of organs of government, whether central or local, to sue for libel, but that it is contrary to the public interest that they should have it. It is contrary to the public interest because to admit such actions would place an undesirable fetter on freedom of speech.”

Lord Keith also examined the judgment of the Supreme Court of South Africa in the case of **Die Spoorbond –v- South African Railways [1946] AD 999** in which the Supreme Court of South Africa held that the South African Railways and Harbours, a governmental department of the Union of South Africa, was not entitled to maintain an action in defamation in respect of a publication alleged to have injured its reputation as the authority responsible for running the railways. Lord Keith set out the following passage from the judgment of Schreiner J.A. (see pages 549-550 of **Derbyshire**):

“I am prepared to assume, for the purposes of the present argument, that the Crown may, at least in so far as it takes part in trading in competition with its subjects, enjoy a reputation, damage to which could be calculated in money.

*On that assumption there is certainly force in the contention that it would be unfair to deny to the Crown the weapon, an action for damages for defamation, which is most feared by calumniators. Nevertheless it seems to me that considerations of fairness and convenience are, on balance, distinctly against the recognition of a right in the Crown to sue the subject in a defamation action to protect that reputation. **The normal means by which the Crown protects itself against attacks upon its management of the country's affairs is political action and not litigation, and it would, I think, be unfortunate if that practice were altered.***

At present certain kinds of criticism of those who manage the state's affairs may lead to criminal prosecutions, while if the criticism consists of defamatory utterances against individual servants of the state actions for defamation will lie at their suit. But subject to the risk of these sanctions and to the possible further risk, to which reference will presently be made, of being sued by the Crown for injurious falsehood, any subject is free to express his opinion upon the management of the country's affairs without fear or legal consequences. I have no doubt that it would involve a serious interference with the free expression of opinion

hitherto enjoyed in this country if the wealth of the state, derived from the state's subjects, could be used to launch against those subjects actions for defamation because they have, falsely and unfairly it may be, criticised or condemned the management of the country. Such actions could not, I think, be confined to those brought by the railways administration for criticism of the running of the railways. Quite a number of government departments, as appeared in the course of the argument, indulge in some form of trading on a greater or a lesser scale. Moreover, the government, when it raises loans, is interested in the good or bad reputation that it may enjoy among possible subscribers to such loans. It would be difficult to assign any limits to the Crown's right to sue for defamation once its right in any case were recognised.” (emphasis mine)

At page 550 of the *Derbyshire* judgment, Lord Keith examines a key issue which was raised in the judgment of Schreiner J.A. when he states:

“In the case of a local authority temporarily under the control of one political party or another it is difficult to say that the local authority as such has any reputation of its own. Reputation is the eyes of the public is more likely to attach to the controlling political party, and with a change in that party the reputation itself

*will change. A publication attacking the activities of the authority will necessarily be an attack on the body of councillors which represent the controlling party, or on the executives who carry on the day-to-day management of its affairs. If the individual reputation of any of these is wrongly impaired by the publication of any of these, he can himself bring proceedings for defamation. **Further, it is open to the controlling body to defend itself by public utterances and in debate in the council chamber**" (emphasis mine).*

The Court was also referred to several other authorities and in particular the following interesting cases from the European Court of Human Rights, viz,

- ***Lingens –v- Austria** (1986) 8 EHRR 407; and*
- ***Oberschlick –v- Austria** (1991) 12 EHRR 238*

In *Gatley on Libel and Slander 9th edition*, the following useful commentary is set out at para. 8.20 (pp. 185 - 186):

"The question in the Derbyshire case was said to be whether the authority was entitled to maintain an action for words which reflected on its "governmental and administrative functions", and its operation of its pension fund, to which the alleged libel related, was clearly thought to fall within that, but it is submitted that the same rule applies even where the activity referred to could properly be described as trading. It has for long, however, been the case that

*activities once carried on by central or local governmental bodies have been transferred to statutory corporation and in recent years this process has been taken further by the transfer of functions to "agencies" and ordinary registered companies, albeit that their functions remain subject to statutory regulation. Such bodies lack the characteristic of being democratically elected, which is regarded as an important factor pointing away from liability in Derbyshire, but that is not, it would seem, a necessary feature in all cases. No doubt everything must turn upon a careful examination of the legal nature of the body in question and the fact that it is in form a company limited by shares is not decisive. **But it is thought that it would be difficult to treat the privatised utility suppliers as "organs of government" rather than as ordinary trading companies for the purpose of the Derbyshire case.*** (emphasis mine).

The principles which underlie the propositions advanced by Lord Keith in Derbyshire and in the several authorities cited to the Court are as follows:

- (i) in a free democratic society it is of the highest public importance that those who hold office in government, those responsible for public administration, and other organs of government, whether central or local, should be open to free and uninhibited public criticism.
- (ii) Those who hold office in government and the like can protect themselves from criticism by political action and public debate. In other words,

politicians (unlike private individuals and corporations) are well able to use the political machinery to defend themselves against attacks from the public.

Having considered all the above principles and authorities, the Court is of the view that the Plaintiff, for the purpose of determining whether it can maintain an action in libel, cannot be considered an organ or department of government. Despite the control exercised by its majority shareholder, the Plaintiff remains essentially a corporate legal entity separate from the State. It is a trading corporation competing with other trading corporations. It does not carry out public functions or public duties. Further, it cannot be said that the Plaintiff is well able to defend itself from unhindered free public criticism or attacks by political action or public debate. Like other trading corporations, it must be able to protect its trading reputation by a suit in libel. It cannot be in the public interest in our free democratic society that the appropriate recourse or remedy available to the representatives of the Plaintiff, where the Plaintiff has been defamed, should be to stand on a political platform and defend the Plaintiff in public debate (*"NP on the hustings", so to speak*).

In the Court's view, there is a distinction to be drawn between the policies of the government concerning the Plaintiff which should be the subject of free and unhindered criticism by the public, and the internal management, operations and activities of the Plaintiff. The Plaintiff, like other trading corporations, should be

able to maintain a suit in libel where there is an unwarranted attack on its internal management, operations and activities.

Accordingly, exercising the caution recommended by Buckley J in **Goldsmith -v- Bhojrul** (supra), the Court is of the view that the public interest favours the Plaintiff being entitled to sue in defamation. The Plaintiff can maintain an action in libel.

(2) **WHETHER THE WORDS WERE PUBLISHED ON AN OCCASION OF PRIVILEGE**

Senior Counsel for the Plaintiff submitted that there was no legal social or moral duty in the Defendant to communicate and the public had no interest to receive defamatory matters of that nature, because it concerned allegations of calumny raised by a newspaper against the Plaintiff.

Senior Counsel for the Plaintiff further argued that in this case, even if there was a duty to publish and a corresponding interest to receive such a publication, the defence can be rebutted by malice. The matter was published recklessly. He submitted that there was actual malice on the part of the Defendant. There was no information leading the Defendant to the honest belief that what was said was justifiable.

Senior Counsel for the Plaintiff further argued that there was no basis in this country for extending the law of qualified privilege to grant the press any greater privilege than that which they have previously enjoyed.

He also contended that the Petroleum Dealers Association would be in no position to say that the books of the Plaintiff were being "cooked", since they could not know what arrangements were made with respect to the Plaintiff's books.

On the other hand, Senior Counsel for the Defendant submitted that in determining whether the occasion was one of qualified privilege, the Court ought to bear in mind the following propositions of law:

- (a) It is for the Court to determine whether the occasion is one of qualified privilege.
- (b) An occasion of privilege arises where there is a social or moral duty on the publisher to publish information or a report and a corresponding interest in the reader to receive such information or report.
- (c) It is for the Court to look at the circumstances of each case.

He argued further that the effect of the defence of qualified privilege is that implied malice is displaced and in order for the Plaintiff to succeed, the Plaintiff must establish actual malice. He submitted that there is nothing contained in the Article from which the court can infer malice.

On the issue of the social or moral duty to publish and the corresponding interest in the public to receive information, the Court was urged to pose the following questions:

With respect to "duty":

- (1) Does the reasonable, morally principled citizen of this country not consider that a responsible newspaper not have a duty to report to the public on the affairs of its company?
- (2) Does not a responsible newspaper not have a duty to report the allegations of the Petroleum Dealers' Association and the emphatic denial of the Plaintiff.

With respect to "interest":

- (1) Does the public not have an interest in knowing how its company is being run? Or indeed, does the public not have an interest in knowing that the association representing Petroleum Dealers throughout the country has queried the profits of the Plaintiff since they are the principal customers of the company?
- (2) Does the public not have an interest to know that the persons entrusted with the running of the Plaintiff by the elected government have categorically denied the allegations of the Petroleum Dealers' Association and according to the Plaintiff, public assets are safe?

In the often cited case of Toogood v Spyring (1834) 1 C.M. & R. 181 at page 193, Parke B stated the law in the following terms:

"In general, an action lies for the malicious publication of statements which are false in fact, and injurious to the character of another, and the law considers such publication as malicious, unless it is fairly made by a person in the discharge of some public or private duty whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned. In such cases the occasion prevents the inference of malice which the law draws from the unauthorised communications, and affords a qualified defence depending on the absence of actual malice. If fairly warranted by any reasonable occasion or exigency, and honestly made, such communications are protected for the common convenience and welfare of society" (emphasis mine).

In the case of Adam -v- Ward 1917 A.C. 309 at page 334, Lord Atkinson set out the following principle:

"A privilege occasion is ... an occasion where the person who makes a communication has an interest; or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential."

In the case of Reynolds -v- Times Newspaper Ltd and others

1999 4 All E.R. 609, the following propositions were set out:

Firstly by Lord Nicholls of Birkenhead at page 619 letters b - d:

"In its valuable and forward-looking analysis of the common law, the Court of Appeal in the present case highlighted that in deciding whether an occasion is privileged the court considers, among other matters, the nature, status and source of the material published and the circumstances of the publication. In stressing the importance of these particular factors, the court treated them as matters going to a question (the circumstantial test) separate from, and additional to, the conventional duty-interest questions (see [1998] 3 All ER 961 at 994-995, [1998] 3 WLR 862 at 899). With all respect to the Court of Appeal, this formulation of three questions gives rise to conceptual and practical difficulties and is better avoided. There is no separate or additional question. These factors are to be taken in to account in determining whether the duty-interest test is satisfied or, as I would prefer to say in a simpler and more direct way, whether the public was entitled to know the particular information. The duty-interest test, or the right to know test, cannot be carried out in isolation from

these factors and without regard to them. A claim to privilege stands or falls according to whether the claim passes or fails this test. There is no further requirement."

And by Lord Hobhouse of Woodborough at page 657 letters d-g:

"This case is not concerned with freedom of expression and opinion. The citizen is at liberty to comment and take part in free discussion. It is of fundamental importance to a free society that this liberty be recognised and protected by the law.

The liberty to communicate (and receive) information has a similar place in a free society but it is important always to remember that it is the communication of information, not misinformation, which is the subject of this liberty. There is no human right to disseminate information that is not true. No public interest is served by publishing or communication misinformation. The working of a democratic society depends on the members of that society being informed, not misinformed. Misleading people and the purveying as facts statements which are not true is destructive of the democratic society and should form no part of such a society. There is no duty to publish what is not true: there is no interest in being misinformed. These

are general propositions going far beyond the mere protection of reputations."

Also at page 658 letters c-d:

"To attract privilege the report must have a qualitative content sufficient to justify the defence should the report turn out to have included some misstatement of fact. It is implicit in the law's insistence on taking account of the circumstances in which the publication, for which privilege is being claimed, was made that the circumstances include the character of that publication. Privilege does not attach, without more, to the repetition of overheard gossip whether attributed or not; nor to speculation, however intelligent."

and at letters h - j:

"As your Lordships agree, there is no generic privilege. There are reasons of principle and practical reasons for this. No genus is satisfactory, nor is any genus more satisfactory than the criterion of what is in the public interest that the public should know and what the publisher could properly consider that he was under a public duty to tell the public. It is clearly established in English law that the duty/interest test is not confined to private duties and interests. The public dimension recognised by the law

encompasses in a satisfactory and adaptable manner those types of publication to which privilege should attach. Any generic category will tend to be both too wide and too narrow. It will fail to take account of the differing character and circumstances of the publications which may fall within it. It will fail to afford privilege to publications which fall outside its definition but are equally deserving of privilege."

Applying the principles set out in **Reynolds** and in the authorities cited to the Court, and having regard to the circumstances of the case, in the mind of the Court, there is a simple question to be posed:

Is there a duty, legal social or moral, in the Defendant to communicate to the general public of Trinidad and Tobago and is there a corresponding interest in the general public to receive information that the Petroleum Dealers' Association has criticised the accounts of the Plaintiff and that the Plaintiff has refuted these criticisms?

The answer must be in the negative. The Plaintiff is a registered trading corporation. In relation to the Plaintiff, the Petroleum Dealers' Association represents those persons who are merely consumers or customers, purchasing products from the Plaintiff. There is in the view of the Court, no duty in the Defendant to communicate the views of the Petroleum Dealers' Association as to the accounting procedures of the

Plaintiff to the general public of Trinidad and Tobago and no corresponding interest in the public to receive such communication.

I am not convinced by the contentions of the Defendant that the assets of the public are at stake and that the public has a right to know whether the books of the Plaintiff are accurate. In a general sense, that proposition may be correct, but the criticisms of the Plaintiff's accounts, that their books were "cooked", by an organisation like the Petroleum Dealers' Association, cannot give rise to an occasion of privilege.

In the circumstances, it is not necessary and I do not propose to determine the issue of malice.

(3) WHETHER THE ARTICLE IS LIBELLOUS AT ALL

Whilst Senior Counsel for the Plaintiff contended that the words published were prima facie defamatory, Senior Counsel for the Defendant argued that the Article when taken as a whole bore no meaning defamatory of the Plaintiff.

In **Gatley** (supra) at para. 3.14 p. 81, the following principles are set out:

"Words are normally construed in their natural and ordinary meaning, i.e. the meaning in which reasonable people of ordinary intelligence, with the ordinary person's general knowledge and experience of worldly affairs, would

be likely to understand them. The question is what would the words convey to the mind of the ordinary, reasonable, fair-minded reader?"

Further, in **Gatley** (supra), para. 3.28, p. 99, the following is set out:

"It follows from the fact that the context and circumstances of the publication must be taken into account that the Plaintiff cannot pick and choose parts of the publication, which, standing alone, would be defamatory. This or that sentence may be considered defamatory, but there may be other passages which take away their sting."

Moreover, in **Duncan & Neill on Defamation 2nd edn (1983)** at page 13, para. 4.11 the law is summarised as follows:

"It order to determine the natural and ordinary meaning of the words of which the plaintiff complains it is necessary to take into account the context in which the words were used and the mode of publication. Thus a plaintiff cannot select an isolated passage in an article and complain of that alone if other parts of the article throw a different light on that passage."

In the case of **Chalmers -v- Payne** (1835) 2 C.M. & R. 156, the following passage from the judgment of Alderson B. is set out at page 159:

"But the question here is, whether the matter 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."

These principles were applied to the interesting facts in the well-known case of **Charleston -v- News Group Newspapers Limited** 1995 2 A.C. 65 at page 70 letter H where Lord Bridge of Harwick said of the passage cited above:

"This passage has been so often quoted that it has become almost conventional jargon among libel lawyers to speak of the bane and the antidote. It is often a debatable question which the jury must resolve whether the antidote is effective to neutralise the bane and in determining this question the jury may certainly consider the mode of publication and the relative prominence given to different parts of it. I can well envisage also that questions might arise in some circumstances as to whether different items of

published material relating to the same subject matter were sufficiently closed connected as to be regarded as a single publication. But no such questions arise in the instant case. There is no dispute that the headlines, photographs and article relating to these plaintiffs constituted a single publication nor that the antidote in the article was sufficient to neutralise any bane in the headlines and photographs."

The Plaintiff has selected isolated words from the Article and has complained about those parts of the Article which report the claims of the Petroleum Dealers' Association that the \$42 million (after tax) profit declared by the Plaintiff *"must be under question"* because of the information the Association has.

As the judge of fact, the Court must consider the Article as a whole: the mode of the publication, the context in which the words were used, the relative prominence given to those parts which report the denials of the Plaintiff as to the claims of the Petroleum Dealers' Association as against those which report the dealers' claims, and come to a conclusion as to the single meaning which ordinary readers would give to the words. The Plaintiff cannot pick and choose those parts of the publication which, standing alone, may be defamatory.

When the Article is examined as a whole, however, it is obvious that the antidote is sufficient to neutralise the bane. The headline of the Article states in bold "*NP dismisses dealers' claim*". The first paragraph and the last two paragraphs set forth prominently the Plaintiff's categorical denial of the claims of the Petroleum Dealers' Association. In my judgment, when taken as a whole, the Article is not defamatory of the Plaintiff. The result of the whole Article is not calculated to injure the Plaintiff's reputation. The Plaintiff's claim is therefore dismissed.

Accordingly, the Plaintiff has succeeded on the first and second issues and the Defendant has succeeded on the third issue. Both Senior Counsel for the Plaintiff and for the Defendant have asked that I should hear them on the issue of costs. This I propose to do.

MAUREEN RAJNAUTH-LEE
Judge