

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. Cv. 556 OF 2001

BETWEEN

AUGUSTINE LOGIE

PLAINTIFF

AND

NATIONAL BROADCASTING NETWORK LTD.

And

RUSKIN MARK

DEFENDANTS

Before The Honourable Mr Justice Stollmeyer

Appearances:

Dr. C. Denbow S.C. and Mrs. M. Dean-Armorer for the Plaintiff

Mr. J. Crystal Q.C. and Mr. A. Vieira for the Defendants

JUDGMENT

In this action the Plaintiff claims damages in libel arising out of a television broadcast on 2nd November, 2000.

Before me for determination are two summonses. The first is the Plaintiff's summons of 1st May 2001 that the defence be struck out under the provisions of Order 18 Rule 19 of the Rules of the Supreme Court and under the inherent

jurisdiction of the Court on the grounds that the defence: (1) discloses no reasonable defence; (2) is scandalous, frivolous and vexatious; (3) is irrelevant and embarrassing; (4) is an abuse of the process of the Court. The application also seeks to have judgment entered for the Plaintiff with damages to be assessed.

The second summons is that of the Defendant subsequently filed 7th June 2001 seeking to have the Plaintiff's statement of claim struck out also under the provisions of Order 18 Rule 19 and/or under the inherent jurisdiction of the Court, on the grounds that it: (1) it discloses no reasonable cause of action; is frivolous and vexatious; (3) is an abuse of the process of the Court. It also seeks to have the Plaintiff's action dismissed and judgment entered for the Defendants.

The Plaintiff's application is supported by the affidavits of Donna Denbow filed 1st May 2001 and 15th June 2001. There is an affidavit of Bari Mohammed filed on 7th June 2001 in opposition to this application. The Defendants' application is supported by another affidavit of Bari Mohammed, also filed 7th June 2001. No affidavit was filed in opposition to this application.

The summonses were heard together.

An agreed transcript of the television broadcast in question is exhibited to the affidavits of both Donna Denbow and Bari Mohammed. The text is as follows:

"Good evening, a day after the publication of the Indian Government's Report into match-fixing into international cricket, another Trinidadian is forced to defend his name".

First there was Brian Lara, now Gus Logie has to clear the air. Now a second local batting star has had his name linked to match-fixing now that the Indian Government has published its Report.

First it was Brian Lara who allegedly received \$48,000 to underperform in 2 One Day Internationals while on tour in India in 1994 and 1995.

His was among an illustrious list of 9 Former Test Captains to be so named or linked in the Report. But in Section 3 under the heading 'Player Betting Syndicate Linkages' the name of Gus Logie apparently features prominently.

But in speaking to the West Indies Cricket Board President Pat Rousseau, Logie the current West Indies Youth Coach categorically denies ever having any gambling or bookmaking ties. He denies ever having met Muktesh Guptar in 1990 and does not even know him personally.

Similarly, Lara has denied the charges against him and says he never once got paid to underperform and also has no knowledge of Muktesh Kumar Guptar the notorious bookie who has testified to having paid several top players in exchange for information and to fix matches.

While the West Indies Board has accepted the responses of the two Trinidadians, they will take no further action. But Lara has already decided to seek legal recourse to clear his name.

And almost unanimously, and as if reading from the same script, several of the players named in the Match-Fixing Report have come out against the contents of the Report and sought to clear their names".

The reference in this broadcast (as I will refer to it for convenience) to the conversation between the President of the West Indies Cricket Board ("WICB") and Mr. Logie flows from a press release issued by the WICB on 2nd November 2000. That press release is pleaded in its entirety at paragraph 9 of the defence

and is exhibited to the affidavit of Bari Mohammed in support of the Defendants' summons. The text of it is as follows:

"For Immediate Release

STATEMENT BY PRESIDENT OF THE WEST INDIES CRICKET BOARD (WICB), THE HON. PAT ROUSSEAU, ON THE CBI MATCH-FIXING REPORT IN INDIA.

*I have seen and had a chance to read Section III of the Report entitled **Player/Betting/Syndicate Linkages** extracted from the Indian CBI document.*

Since then I have spoken to Gus Logie who denies ever meeting anyone from any gambling syndicate or bookmaker in India in 1990. Logie further states he does not know Mukesh Kumar Gupta.

Similarly, Brian Lara says he does not know M.K. Gupta and that he has never intentionally under-performed in any match in India or elsewhere. M.K. Gupta is clearly a poor witness and his vague statement of paying "around \$40 000 to Brian Lara for his information" lacks credence. M.K. Gupta by admission is a gambler and bookmaker but seems to have trouble remembering detail.

We deny any involvement by Messrs. Logie and Lara with M.K. Gupta. Furthermore they, Logie and Lara, deny that there were any approaches to them by gamblers at any time during their visits to India.

We do not propose to take any action on this report and will leave it to the International Cricket Council's (ICC) Anti-Corruption Unit to investigate the matter".

Although not deposed to in the affidavits filed, it is well-known that the broadcast in question was made at a time when the sport of cricket internationally, as well as its various governing bodies in the cricket playing countries of the world, found itself embroiled in allegations of cricketers in international matches being involved in "match-fixing".

This expression or phrase "match-fixing" has been given a variety of meanings or definitions. The WICB, which subsequently agreed to an investigation being held by Mr. Elliott Mottley, Q.C., an eminent Barbadian lawyer, into the allegations made in relation to Mr. Lara sought to define match-fixing in one or more of the following terms:

"Instances where an individual player or a group of players receives money individually or collectively to under-perform;

Instances where a player places bets in matches in which he plays with the intention of under-performing or having other players under-perform.

Instances where a player passes on information about team composition, team morale, pitch condition, weather conditions and probable result etc. for monetary gain".

This definition appears in a release issued by the WICB on 12th April 2001 which is exhibited as "DD7" to the affidavit of Donna Denbow filed 1st May 2001.

Howsoever one may wish to define match-fixing, however, and whether it be a criminal offence in any one or more of the cricket playing countries of the world or, for that matter, any sport-playing country in the world because it is not an occurrence confined to cricket, it necessarily carries with it an implication, connotation, or undertone, of impropriety, of dishonest and/or improper conduct; of corruption. Its concept or definition does not appear to have presented any

difficulty in *Grobbelaar v. News Group Newspaper Ltd.* [2001] 2 All ER 437 and generally, is regarded as taking part in some arrangement by which the outcome of a game or match is contrived. These are all concepts and definitions within the understanding of the ordinary, reasonable individual in society. To be accused of match-fixing is a very serious accusation to make against a professional sportsman, or sportswoman. If the accusation is true it will almost inevitably destroy his or her reputation. It is therefore clearly a matter which would lower an individual in the estimation of right thinking members of society generally (see e.g. *Sim v. Stretch* [1936] 52 TLR 669).

There is no doubt that cricket is a sport with a broad appeal to the public of Trinidad and Tobago. This has been so for many decades, going as far back as the first international cricket tour of Trinidad and Tobago, perhaps in 1900. That is evident from the number of cricket teams, ranging from those at the level of the schoolchild to those who are middle-aged, (and sometimes beyond) to be found on the playing fields of this country during the traditional cricket season. It is also evidenced by the public generally of Trinidad and Tobago following the sport world-wide, particularly when the West Indies team, of which Trinidad and Tobago has from the very inception of West Indian cricket been a constituent part (even if there have been occasions on which no citizen of this country has been a member of a test playing team, which is itself a rare occasion), is playing against one of the other test-playing countries. This is so whether within the West Indies or outside. Most, if not every daily newspaper in this country carries reports of just about every Test and One Day International match, no matter which countries may be involved in the particular match.

The Plaintiff is, or was at that time, a professional cricketer who had played with distinction for both Trinidad and Tobago and the West Indies on a number of occasions. He was well known in the cricketing world. All of this is information in the public domain and well accepted.

As a consequence of the allegations of match-fixing which had been made, the Government of India mandated an investigation by its Central Bureau of Investigations. Interviews were held, and information obtained, if not sworn evidence taken, from a wide range of individuals in India including bookmakers, cricketers both past and present, and administrators. The Plaintiff was not one of the persons interviewed or spoken to. The Central Bureau of Investigations ultimately produced a report ("the CBI Report") which the Indian government made public on 1st November 2000. It was (and I am to be forgiven for perhaps using the incorrect jargon) posted on the "Internet" on or around 2nd November 2000. Once on the Internet, it is instantly accessible to and indeed read by any number of people all over the world, and there is no reason to doubt that this was in all probability done, given the high level of interest exhibited at that time in or concerning the allegations which had been made.

The CBI Report is far too lengthy to reproduce here. It is enough to say that Section III of the Report headed "Report on Player/Betting Syndicate Linkages" was put before me by way of exhibit "DD6" to the affidavit of Donna Denbow filed 1st May 2001. Section III is itself some 46 pages long in the form put before me and is divided into two sub-sections. The first of these sets out the information or evidence obtained from the 38 persons interviewed, including at least 15 players or former players, and that information or evidence is attributed to those individuals. The second sub-section is an analysis of that information or evidence. The Plaintiff's name is mentioned on four occasions, twice in each sub-section.

Section III otherwise makes mention of some 19 other cricketers, including nine captains or former captains of international teams. The information or evidence in relation to each of these players is then analysed in the second sub section.

In the first sub-section Mr. Logie's name is mentioned by two of the persons giving information. The first is Mukesh Kumar Gupta who told the investigators

that at some time in 1990 after the Indian cricket team had toured England and had returned to India, he dined with Manoj Prabhakar at Prabhakar's house at Ghaziabad. That night, he says, Prabhakar "... promised to introduce [Gupta] to other international players against a payment of Rs. 50,000/-each, and after dinner that night spoke to Gus Logie of West Indies over telephone. However, Gus Logie refused to co-operate in any manner with them".

Mukesh Kumar Gupta is a bookmaker and punter who carries on business in India. His evidence takes up some 5½ pages of the CBI Report and there is just this one reference to Mr. Logie on the second page. None of the other 18 bookmakers/punters whose statements are reflected in the CBI Report after that of Mukesh Kumar Gupta makes any mention of Mr. Logie.

Manoj Prabhakar, a former cricketer and whose evidence takes up perhaps two pages of the report, makes mention of Mr. Logie only once. He admits to having actually introduced several players to Gupta, but denies that Mukesh Kumar Gupta ever visited his house at Ghaziabad. He "...admitted having made a phone call to Gus Logie at MK's request, but Logie refused to do anything for MK".

This is the totality of the information given to the CBI investigators about Mr. Logie.

The second sub-section of section 3 of the CBI Report occupies some 20 pages of text. It discusses "in detail" the evidence against individuals and cricketers and then analyses the evidence given to the investigators by the various witnesses. This sub-section on the CBI Report devotes 3 pages to the evidence in relation to Ajay Sharma; 2¾ on the evidence in relation to Manoj Prabhakar; 3 pages to the evidence in relation to Mohammed Azharuddin; 3½ pages on the evidence in relation to Ajay Jadeya; 1 page on the evidence in relation to Nayan Mongia; ½ page on the evidence in relation to Navjot Singh Sidhu and 2½ pages on the

evidence in relation to Kapil Dev. These individuals are or were all international cricketers who played for India.

The evidence in relation to Mr. Logie occupies 3 lines in relation to the analysis of the evidence of Manoj Prabhakar, and 2 lines in relation to the analysis of the evidence relating to "Foreign Players" and those of the West Indies cricket team in particular. The only other member of the latter team referred to here is Brian Lara.

In the analysis of the evidence Manoj Prabhakar the report reads at page 5:

"Mukesh Kumar Gupta has referred to a number of instances when Prabhakar had introduced him to foreign players on payment of money. Prabhakar has stated that he used to receive money only when such introduction proved profitable to Mukesh Kumar Gupta. Mukesh Kumar Gupta has stated that the following players were introduced to him by Prabhakar".

Thereafter, one of the names mentioned is that of Mr. Logie in the following terms:

"Gus Logie: Prabhakar had rung up Gus Logie from his (Prabhakar's) residence at Ghaziabad for an introduction to Mukesh Kumar Gupta, but Logie refused to talk to him. Prabhakar has accepted this statement"

In the analysis of evidence relating to foreign players the report sets out:

"West Indies: MK has stated that Prabhakar had tried to "telephonically introduce him to Gus Logie, who however, refused to talk to MK. Prabhakar has confirmed this in his statement".

It is worth pointing out that page 20 of the second sub-section reads, in part, as follows:

"CBI has not conducted in-depth enquiry into the linkages of overseas players with Indian bookies/punters. Foreign players have also not been examined to verify the evidence of Indian bookies/punters.

"The evidence that has emerged during the enquiry till now against various Indian and foreign players has been discussed in detail. However, certain other leads, which require verification have emerged during the enquiry and the enquiry will therefore continue. There is also a possibility of more evidence being unearthed with regard to some of the players against whom allegations of match-fixing and related malpractices are already established. Some of the bookies/punters examined by CBI have hinted that malpractices have crept into the veterans circuit as well. Enquiry will continue with regard to these aspects also".

There are three principal conclusions to be arrived at from a consideration of Section 3 of the CBI Report.

First, Mr. Logie was clearly not linked to match-fixing, howsoever it may be defined.

It is clear to me beyond any doubt that he refused to so much as talk to Mukesh Kumar Gupta. There is no question of him co-operating with Manoj Prabhakar or with Mukesh Kumar Gupta. There is no question of any money or any other inducement being offered to him. There is no question of him accepting any money or any other inducement. There is no question of him being asked, or he having offered, to non-perform in any way, or to provide any form of information.

Second, Mr. Logie cannot be said to have featured prominently in the CBI Report.

He is referred to on one occasion by each of two witnesses, they being 2 of 38 individuals whose statements are reflected. He is then referred to on two further occasions when the evidence of those witnesses is summarised and analysed.

When regard is had to the fact that the first sub-section of the CBI Report refers to certain other players such as Ajay Sharma and Manoj Prabhakar on innumerable occasions, and that their evidence takes up at least two pages each in the first sub-section, as well as the countless references to other players such as Ajay Jadeya, as well as to the fact that at least 15 players, past or present, were interviewed and have their statements recorded and analysed, it must be kept mind that there was no interview with Mr. Logie nor any information given by him.

It is quite beyond the bounds of accuracy to say that Gus Logie's name figures prominently in the CBI Report.

Third, it is equally clear that there was not and could not be any question that Mr. Logie was "...forced to defend his name".

There was no accusation against him which he was required or needed to respond, and I do not accept the submission on behalf of the Defendants that the WICB press release of 2nd November 2000 is the result of Mr. Logie either having himself initiated any discussion or conversation with Mr. Rousseau, or that the WICB required him to defend himself. There is absolutely nothing before me to suggest either of these situations.

It is in this setting that the Plaintiff instituted proceedings against the Defendants.

He pleads that the words of the broadcast are defamatory both in their natural and ordinary meanings (at paragraph 6 of the statement of claim) as well as by way of innuendo (at paragraph 7 of the statement of claim).

Paragraph 6 of the statement of claim sets out the natural and ordinary meanings to be attributed to the words in the broadcast as follows:

- "(i) *That the Plaintiff was alleged to have been involved in or implicated in the unsavory and despicable practice of producing artificial and contrived results in cricket matches in return for receiving monies.*

- (ii). *That the match fixing report prepared on behalf of the Indian Government named the Plaintiff as being the subject of an allegation and potential enquiry of having received monies from Indian bookmakers in order to underperform in cricket matches in which he played".*

The meanings to be attributed to the words in the broadcast of by way of innuendo are pleaded at paragraph 7 as being:

- "(i) *That the Plaintiff, during his career as a professional cricketer, was alleged to have violated and acted in a dishonest and reprehensible manner contrary to the traditional accepted norms relating to the expected conduct of professional cricketers to act with honesty and integrity in performing their roles.*

- (ii) *That the Plaintiff was alleged to have acted in a manner which degraded and undermined the exalted image of West Indian cricket in agreeing to produce contrived results in cricket matches with*

the West Indian cricket team as the loser in return for receiving money.

(iii) *That the Plaintiff was alleged to have been prepared to perform below his ability and to throw away his wicket deliberately in return for receipt of monies.*

(iv) *That the Plaintiff was alleged to have been prepared to engage in a practice which deceived the cricketing public who attended matches at which he played into believing the opposition team had out-performed the West Indian cricket team on the field of play.*

(v) *That the Plaintiff was dishonest, corrupt and wholly lacking in integrity and unworthy of being considered as a role model in whose footsteps the cricketing youth in Trinidad and Tobago and the West Indies should aspire to follow".*

Particulars are then given as required by Order 79 Rule (3) (1) of the Rules of the Supreme Court.

There is no contention that the words complained of were spoken by the second defendant, as a sports commentator employed by the first defendant, during the course of the sports section of its nightly news broadcast on Thursday 2nd November 2000. The first defendant carries on the business of transmitting television programmes for general reception throughout Trinidad and Tobago.

The Defendants, however, deny that the words bore, or were understood to bear, or were capable of bearing the meanings pleaded by the Plaintiff or any other defamatory meaning. The Defendants also seek to set up the following defences:

1. Justification, in that the words complained of were true in substance and in fact and that in their natural and ordinary meaning meant and were understood to mean that the Plaintiff had been required to defend his name to the WICB as his name featured in the CBI Report. Particulars of this plea are that:
 - a) the Plaintiff's name featured in Section III of the CBI Report;
 - b) the names of the cricketers featured in the CBI Report, including that of the Plaintiff, were revealed prior to the report being fully and extensively available; and
 - c) the Plaintiff spoke with the WICB (which accepted his innocence of any wrongdoing) and that it is to be inferred that he did so to defend his name.

2. fair comment, in that, so far as the words complained of were a comment that the Plaintiff had been required to defend his name to the WICB as it featured in the CBI Report, they constituted fair comment on a matter of public interest, namely the innocence of the cricketers whose names featured in that report.

By way of particulars to this plea, the Defendants repeat the particulars set out in relation to the plea of justification, and also plead the entire contents of the WICB release dated 2nd November 2000 (the text of which I have already set out).

3. qualified privilege, in that the words were published on an occasion of qualified privilege. By way of particulars to this plea, the Defendants say that:

- a) cricket is a game of particular importance in this country, and that any allegations of wrongdoing involving its cricketers would be of substantial public interest;
 - b) the CBI Report purported, amongst other things, to name cricketers "involved in wrongdoing from links to bookmakers";
 - c) by way of repetition, the particulars in support of the plea of justification and the text of the WICB release of 2nd November 2000;
 - d) the Defendants were under a duty, or that it was their proper and legitimate interest, to communicate to those persons to whom the words were broadcast that the Plaintiff's name featured in the CBI Report, and that his denial had been accepted by the WICB which had issued a press release to that effect; and that all those who heard the broadcast had a corresponding and legitimate interest in hearing them; and further, that the broadcast was reasonable in this circumstances and no wider than necessary to inform those who were interested.
 - e) the broadcast was a fair and accurate summary of the CBI Report.
 - f) the broadcast was a fair and accurate summary of the WICB release of 2nd November 2000.
4. that they are entitled to certain constitutional freedoms, namely freedom of the press and freedom of expression, and that the maintenance of this action will place an undesirable restriction on the free exercise of those freedoms.

There are certain principles to be observed in dealing with applications such as those before me. The first of these is that it is only in plain and obvious cases that

a party should seek recourse to the summary process under Order 18 Rule 19, and that the discretion of the Court to strike out should only be exercised when it can be seen clearly that a claim or defence is on the face of it "obviously unsustainable". There should not be a minute and protracted examination of the documents and facts of the case in order to see whether the plaintiff really does have a cause of action, and the Court must be satisfied that there is no reasonable cause of action to go forward, or that the proceedings are frivolous or vexatious. Similarly, a Court must be satisfied that the defences raised are not arguable before exercising its discretion to strike out.

If facts and issues are in dispute, it is not permissible to try the action on affidavits (*Wenlock v. Moloney* [1965] 1WLR 12 38).

As to whether there is a reasonable cause of action, a Court is required to decide whether there is a cause of action with some chance of success when only the allegations in the pleadings are considered (see *Supreme Court Practice* 1997 at 18/19/10), and in a defamation action if the words complained of are capable of a defamatory meaning, the statement of claim will not be struck out as disclosing no reasonable cause of action - see *Drummond-Jackson v. British Medical Association* [1970] 1 All ER 1094. Further, if the plaintiff relies on the natural and ordinary meaning of the words complained of, it is a matter of law whether the words are capable of having the meanings pleaded by a plaintiff (*Lewis v. Daily Telegraph Ltd.* [1963] 2 All ER 155). The meanings is a matter which can be dealt with at this stage, without the matter necessarily going to trial. No evidence is admissible save in the case of a true or legal innuendo as to the sense in which readers understood an allegedly defamatory publication, and no trial is necessary to decide their potential meanings (see CA Civ 154 of 1999 *Trinidad Publishing Co. Ltd. and Others v. Earl Brewster* per Nelson J.A. at pages 16-17, and the reference there to *Charleston v. News Group Newspapers Ltd.* [1995] 2 AC 65; at 70-72).

In considering whether a pleading should be struck out on the basis that is scandalous, allegations of dishonesty and outrageous conduct are not regarded as being scandalous if relevant to the issue. The question to be decided is whether the matter alleged to be scandalous would be admissible in evidence to show the truth of any allegation in the pleading which is material with reference to the relief claimed. If an unnecessary matter in a pleading contains any imputation on the opponent, or makes any charge of misconduct or bad faith against him or anyone else, then it will be struck out on the basis that it is scandalous (see *Supreme Court Practice* at 18/19/15).

In deciding an application to strike out on the basis of the claim or defence being frivolous or vexatious, a Court must decide that the proceedings are obviously so, or that they are obviously unsustainable. It has been said that the pleading must be so clearly frivolous that to advance it would be an abuse of the process of the Court (see *Supreme Court Practice* at 18/19/16). On applications to strike out on the basis of the pleading tending to prejudice, embarrass or delay a fair trial of the action, a liberal interpretation is to be given to these words. A pleading is not embarrassing because the law stated or the reasons alleged may be bad; it must be clear on the face of the allegations that they are irrelevant and not merely unnecessary. If irrelevant issues are raised which may involve expense, trouble and delay, then the irrelevant matter will be struck out (see *Supreme Court Practice* at 18/19/17).

In determining whether an endorsement or a pleading should be struck out as being an abuse of the process of the Court, it must be demonstrated that the process of the Court is not being used bona fide and properly, and that it is being abused (see *Supreme Court Practice* at 18/19/18).

It is only where an application is founded on the ground of there being no reasonable cause of action or defence that affidavit evidence is inadmissible, but where an application is made based upon the inherent jurisdiction of the Court

(see *Supreme Court Practice* at 18/19/28) all of the facts can be gone into as admitted on the pleadings or as are admissible on the affidavits.

In exercising its discretion a Court may, rather than striking out the pleading or the endorsement on the writ, give leave to amend even if it is necessary to adjourn the matter to enable this to be done (see *Supreme Court Practice* at 18/19/2).

As to the words complained of being defamatory

A Court on the hearing of a summons to strike out a defence must arrive at a determination as to whether the words complained of are capable of being defamatory (see e.g. HCA Cv1222 of 1999 *Earl M. Brewster v. Sita Bridgemohan Anor*)

Mr. Logie complains of the broadcast as a whole, but makes particular reference to certain words:

1. "...another Trinidadian is forced to defend his name";
2. "...now Gus Logie has to clear the air. Now a second local batting star has had his name linked to match-fixing now that the Indian Government has its Report";
3. "...in Section 3 under the heading 'Player Betting Syndicate Linkages' "the name of Gus Logie apparently features prominently".

The broadcast must, however, be taken in its entirety.

The test set out in *Sim v. Stretch* (1936) 52 TLR 669 "Would the words tend to lower the plaintiff in the estimation of right thinking members of society generally..." has been expanded to include "...or be likely to affect a person

adversely in the estimation of reasonable people generally” (per Neill L.J. in *Gillick v. British Broadcasting Corporation* [1996] EMLR 267 at p. 273)

"It is a matter of impression as an ordinary person on a first reading, not on a later analysis" (see *Hayward v. Thompson* [1981] 3AER 450).

"The question is what the words would convey to the ordinary man: it is not one of construction in the legal sense" (see *Lewis v. Daily Telegraph Ltd.* [1963] 2AER 151).

In *Forde v. Shah* [1990] 1TTLR 73 it was said:

"One has to look for the gist of the libelit is the perception of the ordinary man rather than simply the view of the Plaintiff, which is paramount. The ordinary man is going to read the whole of the article. He then gets a complete picture of what is being said and it is at that stage that the libel crystallises"

and in *Gillick v. BBC*

"The Court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable viewer watching the programme once".

In considering the alleged defamatory statements, it is necessary to consider the context in which they are spoken or written. The manner in which they are published, and the matters to which they relate and which would influence those to whom they were published in putting a meaning to them are all material in determining whether a libel has been imputed. The juxtaposition of material may also be a relevant consideration (see *Gatley on Libel & Slander* 9th Ed. pg. 96).

The meanings attributed to the words complained of must not be strained or forced or an unreasonable interpretation (see *Jones v. Skelton* [1963] 1WLR 1360).

The principles are perhaps best summarised by Sir Thomas Bingham MR in *Skuse v. Granada Television Ltd.* [1996] EMLR 278 (a case involving a television programme):

"(1) The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable viewer watching the programme once.

(2) The hypothetical reasonable reader (or viewer) is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking. But he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.

(3) While limiting its attention to what the defendant has actually said or written this court should be careful of an over-elaborate analysis of the material in issue.

(4) A television audience would not give the programme the analytical attention of a lawyer to the meaning of a document, an auditor to the interpretation of accounts, or an academic to the content of a learned article.

(5) In deciding what impression the material complained of would have been likely to have on the hypothetical reasonable viewer the court are entitled (if not bound) to have regard to the impression it made on them.

(6) The court should not be too literal in its approach.

(7) A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally, or be likely to affect a person adversely in the estimation of reasonable people generally."

Looked at in its totality, the broadcast is in my view capable of bearing at least the meaning pleaded at paragraph 6(i) of the statement of claim i.e. that the Plaintiff is alleged to have been involved or implicated in the unsavoury and despicable practice of producing artificial and contrived results in cricket matches in return for receiving monies. Why else would he be called upon to "defend his name"? Why would he need to "clear the air"? Obviously, it is because he has been accused of something.

Further, to have one's name "linked to match-fixing" and refer to "gambling [and] "bookmaking ties", and to say that "similarly" another player "has denied [ever being] paid to underperform" can only be understood that the person has been accused of something morally offensive, having an unpleasant or disagreeable character or association (see the definition of "unsavoury" in the *Oxford Dictionary Based on Historical Principles, Third Edition*); or something to be looked down upon, or despised, vile, contemptible (see *Oxford Dictionary*)

Additionally, the broadcast is in my view also capable of bearing the meaning pleaded at paragraph 6(ii), that the CBI Report named the Plaintiff as being the subject of an allegation and potential enquiry of having received monies from Indian bookmakers in order to underperform in cricket matches in which he played. Again, why else would he be called upon to defend his name?

Here is once again the element of the accusatory, even more pronounced on this occasion, because the broadcast sets out that the matter of the Plaintiff's alleged

involvement is, or has been, the subject of enquiry by the CBI and that the report resulting from that enquiry has linked him to match-fixing.

The impression given by the broadcast is clearly that the Plaintiff was involved in, or said to be involved in, match-fixing. I cannot agree with the submission on behalf of the Defendants that they would be understood to mean "Poor Logie, his name get into this jump-up when he's doing nothing wrong", or any similar meaning. That would not be the impression, the perception, of an ordinary person on hearing the broadcast. I do not find these meanings attributed by the Plaintiff to words in the broadcast to be strained or unnatural.

Further, however, I find that the meanings pleaded are not only capable of being defamatory of the Plaintiff. I find, and hold, that they are in fact defamatory of him.

I will return to the meanings pleaded at paragraph 7 of the statement of claim by way of innuendo.

Although words may be defamatory, the broadcast as a whole is to be considered because there may be other parts of it which take away the sting of the defamation (see e.g. *Charleston v. News Group Newspapers Ltd.* [1995] 2AC 65; *Gordon v. Amalgamated T.V. Services Pty Ltd.* [1980] 2NSWLR 416) – the bane and antidote are to be taken together.

This often happens when the conclusion of an article seems to remove the original or initial slur on the character. The mere presence of an antidote in the form of a denial will not of itself suffice, however. The antidote must offset or displace the bane, to the extent that a reader or a listener is not left in the position of having to choose between inconsistent assertions (see *Gatley* para. 3.29).

The antidote in the instant case is said to be found in the broadcast stating that the WICB had accepted Mr. Logie's denials and proposed to take no further action.

"Since then I have spoken to Gus Logie who denies ever meeting anyone from any gambling syndicate or bookmaker in India in 1990. Logie further states he does not know Mukesh Kumar Gupta".

.....

We deny any involvement by Messrs. Logie and Lara with M.K Gupta. Further more they, Logie and Lara, deny that there were any approaches to them by gamblers at any time during their visits to India.

We do not propose to take any action on this report and will leave it to the International Cricket Council's (ICC) Anti-Corruption Unit to investigate the matter".

The WICB had held no enquiry. It could not have done so, given the very short space of time which had elapsed since publication of the CBI Report. The WICB accepted what it had been told by Mr. Logie and was going to take no further action, but nothing is said in the broadcast of the CBI Report itself making no adverse finding against Mr. Logie, indeed, of it having concluded that there was no adverse finding to be made. That is the antidote that was required to offset the bane.

The question is therefore whether the antidote proffered suffices to offset the bane. What it comes down to is this: the broadcast first says that the CBI Report says that Mr. Logie has to defend his name, that he has to clear the air, that he is implicated in match-fixing. That is clear. Second, the broadcast goes on to say that Mr. Logie, when speaking to the President of the WICB, denies any bookmaking or gambling ties, or having met Mukesh Gupta in 1990.

It then goes on to say that Mukesh Gupta is a notorious bookie who said he had paid several top players for information and for fixing matches.

Then follows the statement that the WICB has accepted Mr. Logie's response and will take no further action.

The broadcast therefore says or implies that Mr. Logie was being investigated or was under suspicion, that there were reasonable grounds for the suspicion. But he was not in fact being investigated, nor was he under suspicion, nor were there any reasonable grounds for suspicion, nor was he linked to match-fixing in anyway.

Putting forward the WICB response does not remove the impression that there are allegations of match-fixing against Mr. Logie, and against which he must defend himself. It cannot be the antidote which is required to offset the bane. What does the ordinary man understand by denials being made? - that accusations had been made previously which have not been dealt with. Further, going on further to say that the WICB had accepted the response of Mr. Lara and would take no further action, cannot be an antidote to what was said in the broadcast. Obviously, the WICB was not in a position to make any decision one way or the other as to any allegation which might have been made in the CBI Report.

In these circumstances, the question is whether a further statement in the broadcast that Logie denied, to a third party, as I have set out above, will suffice as an antidote.

I do not think so. A denial arises only where an accusation is made, or an investigation is ongoing, or suspicion is engendered. There were none of these elements present. No accusation was made against Mr. Logie. Indeed, the CBI Report makes it clear that Mr. Logie had no involvement in any form of match-fixing, so that publication of any denial would only add to the impression that some allegation had been made, which was clearly not so.

The final sting in the tail is the last paragraph of the broadcast. To my mind that last paragraph goes only towards undermining any "defence" (and I use the word advisedly) which the Defendants proffer. It would seem to me that this paragraph says in essence that other players named in the CBI Report have come out together with Mr. Logie to deny the contents of the report, all as though it were part of some concerted effort on their part to deflect or deny allegations made against them. But no allegation was made against Mr. Logie, unlike certain other players named in that report.

The antidote, such as is proffered, is more akin to a placebo and fails to neutralise the sting of the defamation. Indeed, it might well be said that it serves only strengthen the toxicity of the venom.

In my view, the antidote, if there is any, fails to offset the bane. The Defendant's summons must fail and is dismissed.

I now turn to the other defences as pleaded and the Plaintiff's summons.

Justification

A defence of justification requires a defendant to prove that the substance of the defamatory statement, the main charge or gist of the libel, is true. It is not sufficient to prove that he believed the statement was true (see e.g. *Sutherland v. Stopes* [1925] AC 47; *Ford v. Shah*).

Clearly there was no allegation in the CBI Report of Mr. Logie being involved in match-fixing or any other impropriety. There was no need for him to defend himself to the WICB, or any other organisation, or to any other person.

The particulars pleaded in the defence of justification (as I have set out above) come down in effect to being that Mr. Logie spoke to the WICB and did so to

defend his name. There is nothing to indicate that he initiated any conversation or discussion with the WICB, although that may perhaps not be material. What is clear and material is that while his name was mentioned in the CBI Report it was certainly not featured prominently; that there was nothing against which he had to defend himself. No allegation of any kind was made against him. That is the gist of the defamation against which the Defendants have failed to prove the truth. There is no truth in the statements complained of and any comment to this effect on the CBI Report was performed incorrectly.

The issue of malice being proven by the Plaintiff does not arise. The defence is plainly unarguable and must fail.

Fair comment

A defence of fair comment on a matter of public interest requires a defendant to prove that the statement or words complained of is, or are, bona fide comment and not a fact, and that there is a basis for the comment. It is not a matter of whether the comment is fair having regard to the facts upon which it is based (see e.g. *Sutherland v. Stopes*). The facts pleaded must themselves be proven to be true. The facts must be stated accurately (see e.g. *Branson v. Bower* The Times 23 July 2000). The comment must not misstate facts, and if a defendant misstates any of the facts upon which he comments, he negates the possibility of fair comment. The omission of a highly relevant fact may amount to a misstatement (see e.g. *Gatley* at pages 237 *et seq*; *Hunt v. Star Newspapers* [1908] 2KB 301; *Digby v. Financial News Ltd.* [1907] 1KB 502).

Again, it falls to the Defendants here to prove the truth of the facts upon which the comments in the broadcast are based. A highly relevant fact is that the broadcast makes absolutely no mention, not just of there being no allegation against Mr. Logie, but also that the CBI Report makes it clear that he refused to have anything to do with Mukesh Gupta.

That apart, there is again no question of his name being featured prominently, nor of Mr. Logie having to defend his name.

The matters set out in the WICB press release do not in my view assist the Defendants in this defence. I do not see how this press release proves any "facts" alleged in the broadcast. Indeed, the factual basis upon which the Defendants comment is untrue. The comments therefore cannot be fair.

Again, this defence is plainly unarguable and must fail.

Freedom of speech

An examination of the law shows that there are occasions when an otherwise defamatory statement will not be actionable, at least successfully, but this defence as pleaded here was taken no further in the written submissions on behalf of the Defendants, nor was anything advanced in support of it during oral arguments.

There is, it has been said, a constitutional right to freedom of expression (see *Cassell & Co. Ltd. v. Broome* [1972] 1AER 801), but there is nothing put before me to show that this right, or that freedom of the press, is untrammelled, and in particular that it gives a right to defame.

There is nothing demonstrated to me which persuades me that in the circumstances of this case a defamatory comment or imputation of fact can be defended, moreso successfully, on the basis of a constitutional right to freedom of expression or of the press. There is no unfettered right of the press, or any person, to defame.

This defence is also plainly unarguable and must also therefore fail

Qualified privilege

Qualified privilege differs from fair comment in that it can also be a defence to misstatements of fact, no matter how harsh, hasty or untrue they may be. It has been said to attach to the occasion on which the statement is made or the words are said, rather than to what is said or about whom it or they may be said. The circumstances, or factors, to be considered when determining whether the occasion is privileged are those at the time of publication (see *Loutchansky & Ors. v. Times Newspapers Ltd. & Ors.* [2001] 4 AER 115).

The defence is based upon public policy and the general welfare of society requiring information to be made available in the public interest. It very often calls for balancing the right of the individual to the preservation of his reputation against this right of the public to the information.

The defence of qualified privilege was dealt with at length in *Reynolds v. Times Newspapers Ltd.* [1999] 4AER 609. *Reynolds* was concerned with whether qualified privilege should be available on occasions when there is publication to the world at large of statements concerning political matters – "a generic qualified privilege of political speech", as Lord Steyn expressed it. The House of Lords decided that there should not be and that the time honoured twofold tests of duty and interest should be maintained, while taking into account all of the circumstances of the case. The duty and interest test, or the right to know test have been said to be whether it can be said that the publisher was under a legal, social or moral duty to publish, and whether the readers of the publication had a legitimate interest in receiving the information published.

Those circumstances, and the matters to be taken into account when assessing them, includes those which are set out by Lord Nicholls at page 626 b - d of *Reynolds*, but the point is made there that the list is not exhaustive and the relevant factors will vary from case to case. In essence, the common law solution

is to have regard to all the circumstances when deciding whether the publication of particular material is privileged because of its value to the public, and its value to the public will depend upon its quality as well as its subject matter. It acknowledges that the reputation of an individual is an integral and important part of his dignity, and that it also forms the basis of many decisions in a democratic society which are fundamental to its wellbeing (page 622 d). Protection of reputation is conducive to the public good, and it is in the public interest that the reputation of public figures should not be debased falsely (page 622 f).

The balancing of the right to protection of personal reputation as against the right to and freedom of expression by the press is one which one has been carefully and gradually developed over the years by common law and statutes. Neither of these rights is absolute, although the latter may be said to have a higher standing (see Simon Brown L.J. in *Al-Fagih v. H.H. Saudi Research and Marketing (UK) Limited*, referred to in *Loutchansky v. Times Newspapers Ltd. & Ors.* (No. 2) [2001] EWCA Civ 1805 at [22]).

The ease of communication with the general public has been greatly increased by the use of broadcast media, whether radio or television, and in such a case it is all the more important that this very ease of communication add to the importance of responsible journalism being observed at all times (see Lord Cooke at page 642 j –643 a of *Reynolds*).

The law has moved from a position where qualified privilege originally attached to occasions on which a statement are made to an individual, to occasions on which statements were communicated to a much larger audience, such as when there is a publication to the world at large.

"Hitherto the only publications to the world at large to which English courts have been willing to extend qualified privilege at common law have been fair and accurate reports of certain proceedings or findings of

legitimate interest to the general public...the law is being developed to meet the reasonable demands of freedom of speech in a modern democracy, by recognising that there may be a wider privilege dependant on the particular circumstances” (see Lord Cooke at page 645 e - g of Reynolds).

At page 657 d-g, of *Reynolds* Lord Hobhouse says:

"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 communicating 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.”

Reynolds is therefore a further development of the law of qualified privilege as it relates to publications in or by the media. It is available in the case of publications to the world at large and if available it attaches to the publication itself rather than the occasion of the publication. The development admits for the increasing necessity to keep the public informed, which is indisputably important,

as well as ensuring that those who publish do so responsibly, all the while giving, if not assuring, a reasonable degree of certainty in the law and its application. While the law might be weighed, to some extent at least, against the protection of the individual's right to preserve his reputation in priority to the right of freedom of expression and freedom of speech, it cannot be ignored totally, nor to the extent where it becomes meaningless and the media is given an unfettered or untrammelled right to publish as it sees fit.

Reynolds was subsequently analysed in *Loutchansky (No. 2)* and its effect and application explained by the Court of Appeal:

"Whereas previously it could truly be said of qualified privilege that it attaches to the occasion of the publication rather than the publication, Reynolds privilege attaches, if at all, to the publication itself: it is impossible to conceive of circumstances in which the occasion of publication could be privileged but the article itself not so. Similarly, once Reynolds privilege attaches, little scope remains for any subsequent finding of malice. Actual malice in this context has traditionally been recognised to consist either of recklessness i.e. not believing the statement to be true or being indifferent as to its truth, or of making it with the dominant motive of injuring the claimant. But the publisher's conduct in both regards must inevitably be explored when considering Lord Nicholls' ten factors i.e. in deciding whether the publication is covered by qualified privilege in the first place. As May LJ observed in GKR Karate (UK) Limited v Yorkshire Post Limited [2000] 1 WLR 2571, at 2580:

"If the judge decides that the occasion is not privileged, the issue of malice does not arise. If the judge decides that the occasion was privileged, he must have decided that, in all the circumstances, at the time of the publication, including the extent of ... enquiries, the public was entitled to know the particular information available ...

without [the journalist] making further enquiries. It is a little difficult to see how the same enquiries which objectively sustained the occasion as privileged would be capable of contributing to a conclusion that subjectively she was recklessly indifferent to the truth or falsity of her publication."(see paragraph [33])

".....Once Reynolds privilege is recognised, as it should be, as a different jurisprudential creature from the traditional form of privilege from which it sprang, the particular nature of the "interest" and "duty" which underlie it can more easily be understood". (see paragraph [35])

“The interest is that of the public in a modern democracy in free expression and, more particularly, in the promotion of a free and vigorous press to keep the public informed. The vital importance of this interest has been identified and emphasised time and again in recent cases and needs no restatement here. The corresponding duty of the journalist (and equally his editor) is to play his proper role in discharging that function. His task is to behave as a responsible journalist. He can have no duty to publish unless he is acting responsibly any more than the public has an interest in reading whatever may be published irresponsibly. That is why in this class of case the question whether the publisher has behaved responsibly is necessarily and intimately bound up with the question of whether the defence of qualified privilege arises. Unless the publisher is acting responsibly privilege cannot arise. That is not the case with regard to the more conventional situations in which qualified privilege arises. A person giving a reference or reporting a crime need not act responsibly: his communication will be privileged subject only to relevance and malice” (see at paragraph [36]).

Reynolds privilege does not arise in the circumstances of *Horrocks v. Lowe* [1975] AC 135 which restated what constitutes malice. At page 150 Lord Diplock

said “... *indifference to the truth of what he publishes is not to be equated with carelessness, impulsiveness or irrationality in arriving at a positive belief that it is true. The freedom of speech protected by law of qualified privilege may be availed by all sorts and conditions of men....*”.

That very “... *Carelessness, impulsiveness or irrationality*” would cost a journalist dear in the evaluation of his claim to privilege under several of the Reynolds factors, perhaps notably factors 3, 4, 6, 7 and 8: As Lord Nicholls said at [p. 623 e-f] (see paragraph [38]).

“[it] is for the Court to have regard all the circumstances in deciding whether the publication of the particular material was privileged because of its value to the public. Its value to the public depends upon its quality as well as its subject matter. This solution has the merit of elasticity...It can be applied appropriately to all information published by a newspaper, whatever its source or origin” (per Lord Nicholls in *Reynolds* at page 623e ...).

At paragraph [40], Lord Nicholls' dictum in *Reynolds* was adopted:

“the common law does not seek to set a higher standard than that of responsible journalism, a standard the media themselves espouse. An incursion into press freedom which goes no further than this would not seem to be excessive or disproportionate”.

The standard is therefore one of responsible journalism. No qualified privilege can attach to a publication unless the publisher or journalist was acting responsibly, and it is for the Court to decide whether he has in fact acted responsibly. The Court is required to be satisfied that this standard has been met.

In doing so, "...the following considerations are likely to feature prominently in the Court's thinking:

i) if the publication is held privileged, that, to all intents and purposes, will provide the publisher with a complete defence... a finding of privilege will effectively pre-empt a finding of malice... malice [is] "notoriously difficult to prove..."... "a dubious safeguard" and ... "very difficult, if not impossible, [to prove] if the sources of the information cannot be identified". Accordingly, if the defence is established, that...has "the effect of denying any remedy, whether by way of compensation or other vindication to a person who has been libelled". The damaging consequences of that, not merely for the aggrieved individual but for the society at large, are highlighted by Lord Nicholls in *Reynolds* at page 622d-f "Reputation is an integral and important part of the dignity of the individual. It also forms the basis of many decisions in a democratic society which are fundamental to its well being: whom to employ or work for, whom to promote, whom to do business with or vote for. Once besmirched by an unfounded allegation in a national newspaper, a reputation can be damaged forever, especially if there is no opportunity to indicate one's reputation. When this happens, society as well the individual is the loser. For it should not be supposed that protection of reputation as a matter of importance only to the affected individual and his family. Protection of reputation is conducive to the public good. It is in the public interest that the reputation of public figures should not be debased falsely."

ii) setting the standard of journalistic responsibility too low would inevitably encourage too great a readiness to publish defamatory matter. Journalists should be rigorous not lax, in their approach. It is in the interests of the public as well as the defamed individual that, wherever possible, truths and not untruths should be told. This is in the interests of

the media too: once untruths can be published with impunity, the public will cease to believe any communications, true or false.

iii) setting the standard too high, however, would be no less damaging to society. This would deter newspapers from discharging the proper function of keeping the public informed. When determining in respect of any given article whether or not it should attract qualified privilege, the Court must bear in mind the likely impact of its ruling not only upon the case in hand but also upon the media's practices generally...The question to be posed is accordingly whether it was in the public interest to publish the article, true or false, rather than whether it was in the public interest to publish an untruth. Even, moreover, when the untruth of the article is established (or when, as here, it is not formally disputed), it is important to remember that the defence of qualified privilege tolerates factual inaccuracy for two purposes: first so as to not deter the publication sued upon (which might have been true); and secondly so as not to deter future publications of truthful information".

I prefer this reasoning to that in *Lange v. Atkinson* [2001] NZLR 257 where the Appeal Court of Zealand declined to follow the reasoning in *Reynolds*. It did so for two reasons: first because it regarded Lord Nicholls' "non-exhaustive" list of factors as blurring, if not removing the line between occasion and publication by adding to the uncertainty in both the principles and application of the law; and second, because it reduced the role of the jury in determining issues of fact. That decision was based principally on the different local, political and social conditions in New Zealand, and is limited to qualified privilege affecting statements published generally and individuals elected to or seeking election to Parliament. I do not think the same conditions can be said to exist in this country, nor do we have jury trials in defamation actions.

Reynolds and Loutchansky (No. 2) were followed by *Bonnick v. Morris* [2002] 3 WLR 820, a decision of the Privy Council on appeal from Jamaica, where Lord Nicholls said, at paragraph [23]:

"Stated shortly, the Reynolds privilege is concerned to provide a proper degree of protection for responsible journalism when reporting matters of public concern. Responsible journalism is the point at which a fair balance is held between freedom of expression on matters of public concern and the reputation of individuals. Maintenance of this standard is in the public interest and in the interests of those whose reputations are involved. It can be regarded as the price journalists pay in return for the privilege. If they are to have the benefit of privilege journalists must exercise due professional skill and care."

The only reported decision of defamation proceedings arising out of allegations of match-fixing to which I have been referred is *Grobbelaar*. This was a case in which the Plaintiff admitted on secretly recorded tapes to having taken money for fixing the outcome of soccer matches. The Court of Appeal, and subsequently the House of Lords, followed the approach adopted by the House of Lords in *Reynolds* and came to the conclusion that, in all the circumstances of the case, the defendant could not succeed on a defence of qualified privilege. As I have said, the concept or definition of match-fixing appears to have presented no difficulty in *Grobbelaar*, nor did the issue of public interest, or public concern. I can see no reason to conclude differently in the present case and would distinguish the decision in *Asha Mirchandani & Ors v. Barbados Rediffusion Service Ltd* [1992] 42 WIR 38 to which I was referred on behalf of the Plaintiff. There, it was held that no privilege attached to the publication of calypsos, but I would not care to draw a parallel between calypsos in Barbados and cricket in Trinidad and Tobago. Indeed, there is every good reason to conclude that gross impropriety, of gross misconduct, of grave dishonesty, in the form of match-fixing on the part of

someone of international standing in the world of sport is a matter of public concern, of public interest.

In examining whether the Defendants in the instant case can demonstrate that there is a triable issue, or an arguable case, in their favour for the establishment of the defence of qualified privilege, the particulars pleaded at paragraph 10 of the defence are of material importance. Of greater importance is perhaps sub paragraph d) which reads as follows:

"In the circumstances the Defendants were under a duty and or it was their proper and legitimate interest to communicate to those to whom the words were broadcast, that the Plaintiff's name featured in the report and that his denial if any wrongdoing had been accepted by the Board which had issued a press release to that effect and all those who heard the words spoken by the Defendants had a corresponding and legitimate interest in receiving such communications. It is further averred that the broadcast by the Defendants was reasonable in all the circumstances and no wider than was necessary in order to inform those interested;"

Putting aside for a moment the other matters set out in the particulars, it is important to focus on the words "...that the Plaintiff's name featured in the report and that his denial if any wrongdoing had been accepted by the Board...".

First, if it is that the test of reciprocal duty and interest is satisfied in the present case, then it can be said that it would fall within the Defendants' duty to set out that the Plaintiff's name appeared in the report. If that were all that had been done, then it may well be that the Plaintiff could not complain, much less succeed in the instant proceedings unless he were to demonstrate malice.

The broadcast, however, does not say merely that the Plaintiff's name appeared in the report. It goes further and says that it featured prominently in the CBI Report,

which I have found it did not. To make matters worse, the broadcast in fact goes on to say that Mr. Logie was forced to defend his name as a consequence of the publication of the report, in which his name features prominently, and that his name (he, in point of fact) had been linked to match-fixing. The Defendants do not plead that the test of reciprocal interest and duty required or committed them to say what they did in the broadcast. Not having so pleaded, they are therefore not in a position to defend the claim as pleaded, nor at a trial to lead evidence which would establish privilege, having regard to the statements actually contained in the broadcast.

That apart, while I accept that the game of cricket is one of importance in Trinidad and Tobago and allegations of wrongdoing involving cricketers would perhaps be of substantial public concern and interest, and while I would also accept that the CBI Report named cricketers involved in wrongdoing from their links to bookmakers, I have already set out my conclusion that the broadcast did not accurately reflect what was contained in the CBI Report. Further, it contained material which was untrue. Consequently, the pleading at sub-paragraph e) of the Particulars that the broadcast was a fair and accurate summary of the report is patently unsupportable. Given my further conclusions as to the efficacy of the WICB press release or the lack of it, as an antidote, it is irrelevant that the broadcast was a fair and accurate summary of that press release.

On that basis I would hold that the defence of qualified privilege must clearly fail on the pleadings. But even if the defence were to be amended as a consequence of what I have set out, and in deference to the submissions made on behalf of the parties, I will deal briefly with the test of, the standard of responsible journalism, and the factors set out by Lord Nicholls in *Reynolds*. I need so only briefly.

In my view, the Defendants clearly fail to meet the test of duty and interest, or the right to know test. They fail to meet the standard of responsible journalism.

There is no interest in the public in being misinformed. No public interest is served by publishing misinformation. There is no human right to disseminate information which is not true. The information published about Mr. Logie purporting to be what was said in the CBI Report was pellucidly untrue.

What was published was at best carelessness at its highest. It demonstrates either having not read the CBI Report at all, or having achieved only the most minimal of glimpses at it. At best, the broadcast was careless. At worst it represents an almost insouciant indifference to the written word, or an almost total disregard for the truth bordering on the irrational. The value to the public of what was broadcast was minimal.

No attempt was made to verify the information by way of speaking to Mr. Logie. Instead, total reliance was placed upon the CBI Report as an antidote. In the circumstances, the reference to the Report was insufficient.

The allegation was without doubt of a very serious nature. The more serious the allegation, the more the public is misinformed and the individual harmed, if the allegation is untrue, as it was here.

I accept that match-fixing is a matter of public concern, of substantial interest to the public, and so too would be any such allegation made against a national of this country who is a professional cricketer. I accept that it is imperative that cricket is not tainted by corruption and that matches are all played competitively rather than predetermined or influenced by corrupt payments or practices. But there was no allegation against Mr. Logie in the CBI Report of him having done so.

If there was any such allegation made against Mr. Logie (as to which there is not a shred of evidence) then the CBI Report itself put paid to it, but this was not said in the broadcast.

I accept that news is - or can be - a perishable item, and that publication on the internet is almost instantaneous, and perhaps almost global as well. But that does not justify rushing to print where there are allegations of dishonesty which can have disastrous effects on the career of persons in the public arena. No comment was sought from Mr. Logie and although I accept that the press release may have reflected to some extent his side of the story as stated by the WICB, it did so in a manner which left listeners to the broadcast having, at the least, to choose between inconsistent assertions.

The tone of the broadcast was sensational; and accusatory in nature. But there was nothing of which Mr. Logie could be accused.

I have therefore, and not with any great difficulty, come to the conclusion that the Defendants have failed to meet the test of responsible journalism. They have failed to exercise due professional skill and care. The defence of qualified privilege must fail on the merits, if not on the pleadings. There can be no arguable defence in qualified privilege to the claim.

Having come to these conclusions I therefore order that:

1. paragraphs 8, 8.1, 9, and 10 of the defence be struck out as disclosing no reasonable defence.
2. paragraph 6 of the defence be amended by deleting the words "paragraphs 6 and" and replacing them with the words "paragraph 7."

Insofar as the meanings pleaded by way of innuendo are concerned, and as are set out in paragraph 7 of the statement of claim, I am not in a position to arrive at a conclusion as to their meaning without the benefit of evidence at a trial. Consequently, I can make no final determination as to whether they are capable of being defamatory and, if so, whether this defence will succeed. In this limited respect therefore the action will have to proceed to trial.

Having concluded that the meanings pleaded at paragraph 6 of the statement of claim are in the natural and ordinary meaning capable of being defamatory of the Plaintiff, I am now to determine whether, as Dr. Denbow submitted, judgment should be entered for the plaintiff with damages to be assessed.

Mr. Crystal submits that on an application of this nature the Court is not in a position to do so, referring me in the provisions of Order 14 Rule 1 of the *Rules of The Supreme Court* which expressly prohibit an application for summary judgment being made in a defamation action. He also refers me to the decisions in *Safeway Stores plc v. Tate* [2001] 2 WLR 1377 and *Alexander v. The Arts Council of Wales* [2001] 1 WLR 1840.

In *Brewster*, where Mendonca J. struck out the defences and gave liberty to the plaintiff to enter judgment, it was said on appeal (per Nelson J.A. at page 22), “further, in our jurisdiction even when it appears that a defence is unsustainable after extensive argument a judge should not flinch from striking out a defence. For a similar approach in Order 14 applications: see *Trinidad Home Developers Ltd. v. IMH Investments Ltd.* (1990) 39 WIR 355 ...”. The Court of Appeal dismissed the appeal and the order of Mendonca J. as to the entry of judgment stood.

As Nelson J.A. reminded us in *Brewster* (at page 22), there is no jury trial in defamation actions in this jurisdiction, unlike England. A judge in this jurisdiction therefore decides all issues of both fact and law, whether at trial or otherwise. There is therefore no reason why on an application such as that as is before me a Court should not in appropriate circumstances decide issues of fact, assuming of course, that the necessary evidence is before the Court.

Additionally, if a defence is (or defences are) struck out so that there is no defence to go to trial, it would be a waste of the time and resources of all concerned, including those of the Court, to require a party to make a formal application for judgment, or for leave to enter judgment. I can see no reason why a Court should not be permitted to do as, indeed, Mendonca J. did.

Additionally, the procedure and the hearing of Order 14 applications requires verification of the facts supporting the plaintiff's case. This is altogether a different matter to applications made under the provisions of Order 18 Rule 19, which concern applications to strike out pleadings and not for summary judgment. "... so in an action for slander in which special damage is the gist of the action, the omission to plead such damage and the action will be dismissed" (see *Supreme Court Practice* at 18/19/7) as it will be where a statement of claim discloses a perfectly good defence. If then an action can be dismissed on the hearing of an Order 18 Rule 19 application, there would seem to be no good reason why if the defence is struck out that there should not be an order the a plaintiff be at liberty to enter judgment, or that judgment be entered for the plaintiff.

In my view therefore, it is within my discretion as, as was done in *Brewster*, to give leave to enter judgment if there is no sustainable defence or no suggestion of some viable defence (per Nelson J.A. at page 22), or to enter judgment for the Plaintiff in this action.

Having ordered the defences to the defamatory meanings pleaded at paragraph 6 of the statement of claim struck out, I further order that judgment be entered for the Plaintiff in terms of that paragraph. Damages are to be assessed by a Master.

I will hear Advocates on the issue of innuendo, or any other issue they may wish to raise. I will also hear them on the issue of costs which they agreed at the hearing would await the outcome of my determination of the summonses.

4th December, 2002.

C.V.H.Stollmeyer

Judge