

pradore to be apparently invested with an authority beyond or greater than the limited authority which the plaintiff knew him to possess. Everything which he was by them permitted to do from the beginning to the end of the business was as consistent with the exercise of this limited authority as it was with the exercise of a wider or more general authority. There cannot therefore be any estoppel as against the bank in respect of any of the steps in the transaction since they have not done or permitted anything by which the plaintiff was deceived. It was contended by Mr Duke on behalf of the respondent that in dealings such as those which took place in this case with the Chinese customers of the bank the compradore was the *alter ego* of the manager, and that as the plaintiff's money had admittedly been handed to him, and the receipt of it acknowledged by the proper bank official in the compradore department, it must be taken for the purposes of this case to have been received by the bank, is now held by them, and should be returned to the plaintiff. Their Lordships think, for the reasons already stated, that this contention cannot be sustained. On the whole they are of opinion that there was no evidence to support the finding of the jury on the third question left to them, that the appellants were therefore entitled to have the judgment entered for the plaintiff in the action set aside and judgment entered for them with costs, and that this appeal should be allowed. They will humbly advise His Majesty accordingly. Having come to this conclusion, it is unnecessary for their Lordships to deal with the question of the alleged misdirection of the Chief-Justice in his summing up. They think it right, however, to say that while he summarised the evidence with the greatest clearness and accuracy, and directed their attention to most of the material points, he appears to have failed to appreciate how inapplicable the doctrine of "holding out" is to a case in which the agent's authority is, to the knowledge of the person dealing with him, limited, and that by reason of this his observations to the jury at several portions of his charge amount practically to misdirections by which they might possibly have been misled, though it is by no means clear that they did not in fact fully understand the nature of the questions left to them. The respondent must pay the costs of the appeal.

Judgment appealed from reversed.

Counsel for Appellants—Scrutton, K.C.—Mackinnon. Agents—Stephenson, Harwood, & Company, Solicitors.

Counsel for Respondents—Duke, K.C.—Nesbitt. Agents—Wadson & Malleison, Solicitors.

HOUSE OF LORDS.

Monday, December 6, 1909.

(Before the Lord Chancellor (Loreburn),
Lords Atkinson, Gorell, and Shaw.)

HULTON & COMPANY v. JONES.

(ON APPEAL FROM THE COURT OF APPEAL
IN ENGLAND.)

Reparation—Slander—No Defamatory Intention—Identity of Person Defamed—Plaintiff's Existence Unknown to Defendant.

A newspaper published an article containing defamatory statements about "Artemus Jones," which was intended to be a fictitious name. A Mr Artemus Jones, of whose existence the newspaper might have known but for carelessness, brought an action for damages, in which it was proved that persons of his acquaintance had read the article in the belief that it referred to him.

* *Held* that the plaintiff was entitled to maintain the action.

Mr Artemus Jones had formerly contributed articles signed by that name to the *Sunday Chronicle* newspaper. Some years afterwards an article was published in the *Sunday Chronicle* descriptive of a scene at a French seaside, containing statements of a defamatory nature about one "Artemus Jones." It was admitted that the writer and newspaper editor were unaware of the real Mr Jones' existence; but it was proved by persons who knew Mr Jones that they had read the article and believed it referred to him. Mr Jones brought an action, and obtained a verdict of £1750 damages, which was affirmed by the Court of Appeal (LORD ALVERSTONE, C.J., and FARWELL, L.J.,—FLETCHER MOULTON, L.J., dissenting).

Their Lordships gave considered judgment as follows:—

LORD CHANCELLOR (LOREBURN)—I think that this appeal must be dismissed. A question in regard to the law of libel has been raised which does not seem to me to be entitled to the support of your Lordships. Libel is a tortious act. What does the tort consist in? It consists in using language which others knowing the circumstances would reasonably think to be defamatory of the person complaining of and injured by it. A person charged with libel cannot defend himself by showing that he intended in his own breast not to defame, or that he intended not to defame the plaintiff. He has none the less imputed something disgraceful, and has none the less injured the plaintiff. A man may publish a libel in good faith believing it to be true, and it may be found by the jury that he acted in good faith believing it to be true, and reasonably believing it to be true, but that in fact the statement was false. Under those circumstances he has no defence to the action. It was suggested that there was a misdirection by the

learned Judge in this case. I see none. He laid down the law in his summing-up as follows:—"The real point upon which your verdict must turn is—Ought or ought not sensible and reasonable people reading this article to think that it was a mere imaginary person such as I have said—Tom Jones, Mr Pecksniff as a humbug, Mr Stiggins, or any name of that sort which one reads of in literature, used as a type? If you think that any reasonable person would think that, it is not actionable at all. If, on the other hand, you do not think that, but think that people would suppose it to mean some real person, those who did not know the plaintiff of course would not know who the real person was, but those who did know of the existence of the plaintiff would think that it was the plaintiff, then the action is maintainable, subject to such damages as you think under all the circumstances are fair and right to give to the plaintiff." I see no objection in law to that passage. The damages are certainly heavy, but I think that your Lordships ought to remember two things—The first is that the jury were entitled to think, in the absence of proof satisfactory to them—and they were the judges of it—that some ingredient of recklessness entered into the publication and the writing of this article, especially as Mr Jones, the plaintiff, had been employed on this very newspaper, and his name was well known in the paper, and also well known in the district in which the paper circulated. In the second place, the jury were entitled to say—"This kind of article is a kind of article to be condemned." There is no tribunal more fitted or more competent to decide in regard to publications—especially publications in the newspaper press—whether they bear a stamp and character which ought to enlist sympathy and to secure protection. If they think that the licence is not fairly used, and that the tone and the style of the article and the libel in question is one that is reprehensible and ought to be checked, it is for the jury to say so; and for my part, although I think that the damages are certainly high in this case, I am not prepared to advise your Lordships to interfere, especially as the Court of Appeal have not thought it right to interfere, with the verdict which is now seeking confirmation.

LORD ATKINSON—I concur with the judgment which has been delivered by the Lord Chancellor, and I also concur substantially with the judgment delivered by Farwell, L.J., in the Court of Appeal. I think that he has put the case upon its true ground, and I should be quite willing to adopt in the main the conclusions at which he has arrived.

LORD GORELL—I also concur with the judgment which has been pronounced by the Lord Chancellor. I also wish to express my concurrence with the observations which Lord Atkinson has made upon the judgment of Farwell, L.J.

LORD SHAW—I concur in the observations which have been made by the Lord Chan-

cellor, but for my own part I should desire in terms to adopt certain language which I will now read from the judgment of Lord Alverstone, C.J.—"The question, if it be disputed whether the article is a libel upon the plaintiff, is a question of fact for the jury, and in my judgment this question of fact involves not only whether the language used of a person in its fair and ordinary meaning is libellous or defamatory, but whether the person referred to in the libel would be understood by persons who knew him to be the plaintiff." With regard to this whole matter I should put my propositions in a threefold form, and, as I am not acquainted by training with a system of jurisprudence in which criminal libel has any share, I desire my observations to be confined to the question of civil responsibility. In the publication of matter of a libellous character—that is, matter which would be libellous if applying to an actual person—the responsibility is as follows:—In the first place, there is responsibility for the words used being taken to signify that which readers would reasonably understand by them; in the second place, there is responsibility also for the names used being taken to signify those whom the readers would reasonably understand by those names; and in the third place, the same principle is applicable to persons unnamed but sufficiently indicated by designation or description. I demur to the observation so frequently made in the argument that these principles are novel. Sufficient expression is given to the same principles by Abbott, C.J., in the case of *Bourke v. Warren*, 2 C. & P. 309, in which that learned Judge said—"The question for your consideration is whether you think that the libel designates the plaintiff in such a way as to let those who knew him understand that he was the person meant. It is not necessary that all the world should understand the libel; it is sufficient if those who know the plaintiff can make out that he is the person meant." I think that it is out of the question to suggest that that means "meant in the mind of the writer" or of the publisher; it must mean "meant by the words employed." Lord Coleridge, C.J., dealt similarly with the point in *Gibson v. Evans*, 23 Q. B. Div. 384, where in the course of the argument he remarked—"It does not signify what the writer meant. The question is whether the alleged libel was so published by the defendant that the world would apply it to the plaintiff."

Appeal dismissed.

Counsel for Appellants—Isaacs, K.C.—Norman Craig, K.C. Agents—Lewis & Lewis, Solicitors.

Counsel for Respondent—Lush, K.C.—Hewart. Agents—Nicol, Son, & Jones, Solicitors.