

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Laughton v. the Lord Bishop of Sodor and Man, from the Isle of Man; delivered 14th December, 1872.

Present :

SIR JAMES W. COLVILLE.
SIR BARNES PEACOCK.
SIR MONTAGUE SMITH.
SIR ROBERT P. COLLIER.

THIS was an action of libel brought by the Appellant, who is a barrister practising in the Isle of Man, against the Bishop of Sodor and Man.

The libel complained of is contained in a written charge read by the Bishop to his clergy assembled in Convocation, and afterwards published by his authority in the "Manx Sun" newspaper, a part of which charge purported to be a reply to a speech impugning the conduct of the Bishop addressed by the Plaintiff as an advocate to the House of Keys in opposition to a Bill. The Bishop pleaded a general denial of the allegations in the declaration. The case was tried before one of the Deemsters and a special jury. The Deemster, after defining the legal meaning of libel, left it to the jury to say whether the language of the charge was or was not a libel. He further thus directed them: "In my opinion the occasion upon which the alleged libel was committed was a privileged occasion, subject only to this—that if there was malice, actual malice, express malice, you will find a verdict against the Bishop for the excess." The jury found a verdict for the Plaintiff, with 400*l.* damages.

This verdict was set aside by the Appellate Court of the Isle, on the ground that there was no evidence of express malice which the Deemster was justified in leaving to the jury, and Judgment was entered for

the Defendant, in pursuance of a power given to the Appellate Court by a local statute entitled the Appellate Jurisdiction Act, 1867.

It has been argued before their Lordships that the delivery by the Bishop of his charge to the clergy in Convocation fell within the category of communications absolutely privileged, with respect to which the question of malice cannot be inquired into, such as the charge of a Judge to a jury, or a speech delivered in Parliament.

Inasmuch, however, as one count in the declaration is founded upon the Bishop's sending a report of his speech to a newspaper for publication, a proceeding certainly not entitled to such absolute privilege, the decision of this question could not dispose of the Appeal, and their Lordships deem it enough in the present case to determine whether or not the communication was a privileged one in the ordinary sense in which that term is used, that is to say, a communication made under such circumstances that the *prima facie* inference of malice which the law draws from all libellous expressions is rebutted, and the burden of proving express malice thrown upon the Plaintiff.

In order to determine this question as well as that of express malice which arises if it be determined in favour of the Defendant, it is necessary to examine the character of the attack to which the charge of the Bishop purports to be a defence, and the circumstances under which that attack was made.

It appears that a Bill was prepared by the Attorney-General, under the direction of the Lieutenant-Governor, entitled "An Act for the division of the parish of Braddon." It proposed to sever from that parish as much of the town of Douglas as is contained within it, dividing the severed district into three parishes, and conferring on the Bishop the right of appointing vicars to two of them, St. George and St. Thomas, reserving to the present vicar of Braddon all fees and offerings to which he was entitled. It should be observed that a dispute was pending between the Bishop and the Vicar of Braddon as to the patronage of St. Thomas' Chapel and that the Bill would practically have settled that dispute in favour of the Bishop.

This Bill was introduced into and passed through the Council, whereupon a public meeting was held,

described to be of a somewhat excited character, in which resolutions were passed for petitioning the House of Keys against it; this meeting was addressed—it is said effectively—by Mr. Laughton, the Appellant, who was retained as Counsel to oppose the Bill before the House of Keys.

The purport of the speech of Mr. Laughton to the House of Keys, which is said by one of those who instructed him, to have been made altogether in pursuance of his instructions, was to the following effect:—

He contended that the Bill, though nominally that of the Attorney-General, was in reality that of the Bishop. That the Bishop, under the cloak of anxiety for the public welfare and the cure of souls, in reality sought only increased patronage for himself, at the expense partly of the Vicar of Braddon, his conduct to whom was described as an attempt “to take by violence the property of his neighbour.” After enforcing these views, not only by argument but by invective and sarcasm, much applauded by a large number of persons, who, as well as the members of the House, appear to have heard the speech, Mr. Laughton proceeded to a general attack upon the Bishop in these terms:

“His Lordship came here in 1854, and what has he done in the way of patronage? Has he so supported the Manx Church as to entitle himself to the support and confidence of the Manx clergy and the Manx people? Has he advanced the spiritual interests of the diocese over which he was appointed? Has he been careful in all ways to do that which would be for the good of the souls committed to his charge? Or has he not, by act after act, till the whole island has echoed and re-echoed with cries of ‘Shame!’ brought a foul stain and scandal upon the Church?”

He concluded his speech, during the course of which the Speaker of the House more than once intimated to him that he was exceeding his province as an advocate, in the following terms:—

“The report of the sentiments and opinions uttered here will go forth through the press; and, probably, from this time we may date the restoration of the Manx church, and its future advancement may be substituted for what has hitherto been decided retrogression.”

It is to be observed that he here refers not merely to the facts which he was instructed to state, and the arguments founded on them, but to “sentiments and opinions” which the Bishop may not unreasonably

have supposed to have been uttered by him fully as much in his character of a Manx man, as in that of an advocate.

It was to this speech that the Bishop in the next assembling of his Clergy in Convocation thought it proper to reply, and their Lordships are clearly of opinion that his charge was a privileged communication in the ordinary sense of the term, on the well-known principle that a communication made *bonâ fide* upon any subject-matter in which the party communicating has an interest, or in reference to which he has, or honestly believes he has a duty, is privileged, if made to a person having a corresponding interest or duty, although it contains criminatory matter which, without that privilege, would be defamatory and actionable.*

The Bishop had manifestly an interest in explaining and defending his conduct, if indeed it were not strictly his duty to do so, and the Clergy were deeply interested in that explanation and defence.

It does not necessarily follow that the publication of the charge by the Bishop in the local newspaper was equally privileged. Considering, however, that the Laity as well as the Clergy are deeply interested in the character of their Bishop and in his conduct of the affairs of his Diocese, and that the speech impugning his character and conduct had been addressed to both Clergy and Laity, and conveyed to both by the press, their Lordships are of opinion that the Bishop was privileged in addressing his defence to both through the same channel which had conveyed the attack, provided that he did this *bonâ fide*, for the purpose of vindicating himself, or of informing the public upon matters which they were concerned to know, and not of defaming or injuring the Appellant.

For these reasons their Lordships agree with both the Courts of the Isle in holding that the communication was a privileged one in the sense before explained.

The only remaining question is, whether or not there was evidence of express malice on the part of the Defendant, which ought to have been submitted to the Jury; not indeed a mere particle or scintilla of evidence, but such as could reasonably

* *Whitely v. Adams*, 15 C. B., N. S., 392.

support a finding for the Plaintiff. Express malice, or as it is sometimes called "malice in fact," as distinguished from malice inferred by law, is defined by Parke, B., in *Wright v. Woodgate*,* wherein he thus expresses himself: "The proper meaning of a privileged communication is this: that the occasion on which the communication was made rebuts the inference *prima facie* arising from a statement prejudicial to the character of the Plaintiff, and puts it upon him to prove that there was malice in fact—that the defendant was actuated by motives of personal spite or ill-will, independent of the occasion on which the communication was made."

It has been contended that malice in this sense is to be inferred from the language of the Bishop's charge, and undoubtedly a privileged communication may be couched in language so much too violent for the occasion as to afford in itself evidence of malice, whereby the privilege is forfeited.

The parts of the charge relied upon by the Plaintiff are the following:—

"The result of this unavoidable proceeding is now, unhappily, too well known. The Act was proposed by the Attorney-General of this isle as a public Act; and he consented to make himself personally responsible for it; I declined to do so for reasons which I am not at liberty to state. Vested interests, and the spiritual welfare of the whole town of Douglas, were carefully provided for; and a special clause was inserted preserving to the present Vicar of Braddan his alleged legal rights. After protracted discussions this proposed measure was passed by the Council, and sent by the Lieutenant-Governor to the House of Keys.

"It grieves me much to be obliged to speak of the reception which it (the Bill) met with in this branch of the Insular Legislature. But regard for the Church of this isle, for my own official influence in this diocese, and for my own personal reputation compel me to record, where alone I can speak on such a subject with becoming regard for the dignity of my office, my emphatic protest against the manner in which this proposed measure was treated by the House of Keys; and to express my surprise that any legislative assembly, however constituted, should have deliberately, and with fore-knowledge of what was intended, permitted a gross personal attack to be made, in its presence, upon a member of the Council, without any previous notice being given him; and that it should have encouraged unproved charges against the Bishop of the diocese of a serious nature, to be made the basis of an argument for refusing even to consider the Bill as a public measure; and for treating it as private Act, intro-

* 1 *Cromp. and M. and R.*, 513.

duced by the Bishop of the diocese, under false pretences, and with other objects than those which were clearly stated in the preamble of the Bill.

“If the statements to which I refer, and the language permitted in making them, had been addressed to any other audience, in any other place, I should have treated them as unworthy of any serious attention. But when they were deliberately uttered by counsel at the bar of the House of Keys, pleading in behalf of one of my own clergy and others; and when no member of that House challenged the accuracy of his statements of facts, though some protested against the intemperance of his expressions; and when arguments and language were employed with reference to myself which are not ordinarily used by any man of high professional repute, even when pleading before a common jury or a parish vestry, the influence produced by such a proceeding, throughout so small a community as ours, is calculated to be of very serious consequence, indirectly, to the Church in this diocese; and the practical result must be to deter me from making any other attempt to remedy, by local legislation, any of those difficulties which have grown up among us from time to time affecting our spiritual work, and which are becoming day by day of increasing importance.

“‘Magna est veritas’ is, however, an aphorism of general application, though it is sometimes very slow in counteracting the effect of slanderous statements, boldly made, and of uncharitable imputations: and we all know how any refutation, however complete, of false accusations, propagated under the apparent sanction of well-informed persons, frequently fails in having its due weight with ill-disposed persons, against the conclusions of pre-conceived prejudices and of foregone conclusions.

“Meanwhile ‘mens conscia recti’ must be the solace of any public man who, in the discharge of his official duties, has to exercise authority in opposition to old customs, or to private interests, or to private judgment, as much as to his own personal inclinations; and ‘fiat justitia ruat coelum’ must be, in a special sense, his rule of action who is called to maintain order and discipline, as well as to teach unwelcome truths, in the household of a heavenly Lord and Master.

“It is not my intention, my reverend brethren, to plead, as it were, before you my own justification, in reply to the indictment which has been preferred against me in another place, under circumstances of a peculiarly grievous nature. You neither desire it nor need it. The time may yet come when a proper opportunity will be given me of exposing the entire disregard to truth which characterized the statements of which I have so much reason to complain. I can only remind you once more that the whole body of our Church must necessarily suffer by whatsoever impairs the functions of any one member thereof; and I think it hardly needful for me to assure you that, as I should feel it to be my bounden duty to defend the humblest curate under my charge to the best of my ability, against any false imputations injuriously affecting his ministerial influence, so I am, for the Church’s sake, constrained to protect the office which I hold from the assaults of wicked men; and this is the only time and place which enables me to do so with due regard to the dignity of my office; and what a learned judge (Cole-

ridge) has said, remains true—'What does not withstand, has no standing ground.'

"Doubtless it is to such a feeling, or what we, in common parlance, characterize as 'esprit de corps,' or rather, loyalty to the Church, as a Church, and to each other as brethren, which impelled some of those who were directly or indirectly implicated in charges preferred against their diocesan unjustly to state publicly facts in refutation of calumnious assertions; and, as far as it was in their power to do so, to correct mis-statements. To them some acknowledgment is due from me of an uncommon exercise of honour, and of courageous right feeling; knowing, as they must have done, that they exposed themselves thereby to misrepresentation of their animus and their motives. It would have been well, in my judgment, for the Church and for themselves, if others having (as we all know they had) the power to do so had acted likewise; or rather been the first to set the example of so doing. However dignified such a course may be in a man who is conscious of his own integrity self-complacency in treating the sin of bearing false witness against a neighbour with 'silent contempt' is not at all times, and under all circumstances, a sign of honourable manliness; especially not so, when public or private utterances are seemingly encouraged which are manifestly prejudicial to the reputation and influence of a brother or a friend, who bears with them, in common, though with various measures of responsibility, the title of 'fellow-citizen with the saints, and of the household of God.'"

Some expressions here used undoubtedly go beyond what was necessary for self-defence, but it does not therefore follow that they afford evidence of malice for a jury. To submit the language of privileged communications to a strict scrutiny, and to hold all excess beyond the absolute exigency of the occasion, to be evidence of malice would in effect greatly limit, if not altogether defeat, that protection which the law throws over privileged communications.

The rule on this subject is thus expressed by the Court of Common Pleas in *Somerville v. Hawkins*.*

"It certainly is not necessary, in order to enable the Plaintiff to have the question of malice submitted to the jury, that the evidence is such as necessarily leads to the conclusion that malice existed, or that it should be inconsistent with the non-existence of malice; but it is necessary that the evidence should raise a probability of malice, and be more consistent with its existence than with its non-existence."

The rule thus laid down has been since recognized

* 10 C. B., 575.

by the Court of Common Pleas in *Harris v. Thompson*,* by the Court of Queen's Bench in *Taylor v. Hawkins*,† and more recently in *Spill v. Maule*‡ by the Court of Exchequer Chamber. In the last case the communication, *prima facie* privileged, described conduct of the Plaintiff admitting of two interpretations as "dishonest and disgraceful." In delivering the judgment of the Court of Exchequer Chamber the Chief Justice thus expressed himself: "The presumption of law being in favour of the absence of malice by the Defendant, and the only evidence of malice being his description of acts done by the Plaintiff, which were capable of a two-fold construction, that presumption of innocence which attaches to the writer must also, where his act is capable of a double aspect still attend him. Starting with the presumption of innocence in his favour, we must presume that the Defendant did entertain that view of the Plaintiff's acts, which induced him to believe, and honestly to believe and say, that the Plaintiff's conduct was dishonest and disgraceful. We have not to deal with the question whether the Plaintiff did or did not act dishonestly and disgracefully: all we have to examine is, whether the Defendant stated no more than what he believed, or might reasonably believe; if he stated no more than this he is not liable."

Adopting the principle of these cases, their Lordships do not think it necessary to determine whether or not the language of Mr. Laughton was such as is ordinarily used by barristers of high reputation, nor whether or not the accusations against the Bishop were false, or false as to the knowledge of the Plaintiff or of those who instructed him, or whether they were preferred honestly or wickedly. It is enough that, having regard to the circumstances and nature of the attack upon him, the Bishop may, in their Lordships' opinion, have honestly believed that everything which he said was true, and proper for his own vindication, although, in fact, some of his expressions exceeded what was necessary for it; and that the language of his charge is more consistent with such honest belief, and with the purpose of self-vindication, than with that of injuring the Plaintiff. This being so, the Deemster ought to have decided

* 13 C. B., 333.

† 16 Q. B., 308.

‡ 4 L. R., G. A., 232.

in accordance with the case of *Somerville v. Hawkins*, that the language of the charge afforded no evidence of malice to be submitted to the jury. Had the Bishop referred to the conduct of the Plaintiff on any other occasion than that of his addressing the House of Keys, or made any general attack upon his private or professional character, the case would have been different. Some attempt was made to show malice by evidence extrinsic of the Bishop's charge. His neglect to answer the Plaintiff's letters was relied on in the Court below, but little before their Lordships, because the explanation was sufficient that the letters were sent to the Bishop's legal adviser to be answered by him. It was contended that malice was to be inferred from the Bishop's Advocate objecting at the trial of the cause to the proof of the truth of the Plaintiff's statement, and endeavouring to prove the impropriety of the Plaintiff's demeanour, but their Lordships concur with the Appellate Court that no such inference could be properly drawn. Lastly, it was insisted that the sending of the charge to the "Manx Sun" was evidence of malice. This was, in itself, under the circumstances already adverted to, no such evidence, but if there had been evidence of malice *aliunde*, it would have been proper to put to the jury the question whether the charge was sent to the newspaper *bond fide* or maliciously in the sense before explained.

For the above reasons their Lordships will humbly advise Her Majesty that the Judgment of the Appellate Court of the Isle of Man be affirmed, and this Appeal dismissed with costs.

