

Charles Woodrow Wright - - - - - Appellant

v.

The Gleaner Company Limited - - - - - Respondent

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 12TH JANUARY 1981

Present at the Hearing:

LORD WILBERFORCE
LORD KEITH OF KINKEL
LORD ROSKILL
LORD BRIDGE OF HARWICH
SIR JOHN MEGAW

[Delivered by LORD BRIDGE OF HARWICH]

In this appeal from a decision of the Court of Appeal of Jamaica it will be convenient to refer to the appellant as the plaintiff and the respondent as the defendant. In January 1973 the plaintiff's wife divorced him on the ground of cruelty. The suit was undefended. In a report of the divorce proceedings in "The Star", a newspaper owned and published by the defendant, the following paragraph appeared:—

"Petitioner [the wife] said that respondent [the plaintiff] became ill in December, 1971, and was admitted to Bellevue Hospital as a patient of Dr. KENNETH ROYES. He left the hospital before he was discharged and accused her of conniving with the doctor to keep him there."

The plaintiff brought proceedings against the defendant in the Supreme Court of Jamaica claiming damages for libel in respect of this paragraph. The claim was pleaded, in paragraph 4 of the Statement of Claim, as follows:—

"By the said words the Defendant meant and was understood to mean that the Plaintiff was mentally ill and was hospitalised in a mental institution.

PARTICULARS PURSUANT TO SECTION 170(2) OF CAP. 177

- (a) The Plaintiff was the Respondent in Divorce proceedings in respect of which the aforementioned words were published.
- (b) The only Bellevue Hospital in Jamaica is a mental Asylum.
- (c) Dr. Kenneth Royes was at all material times a Psychiatrist and Senior Medical Officer (acting) attached to the Bellevue Hospital."

The defendant, amongst other defences, pleaded justification.

The action was heard before Wilkie J. and a special jury on 19th, 20th and 21st May 1975. To the question: Are the words substantially true? the jury answered: No. They proceeded to assess damages at \$2,000 and judgment was entered for the plaintiff for this sum and costs.

The defendant appealed to the Court of Appeal of Jamaica. The appeal was heard before Henry, Melville and Carberry J.J.A. who, on 12th July 1978 allowed the appeal and ordered a new trial. Their reasons were given on 21st February 1979 in a judgment delivered by Carberry J.A., with which the other two members of the Court agreed.

On 16th July 1979 the Court of Appeal granted final leave to the plaintiff to appeal to Her Majesty in Council.

The defendant, in due course, presented a petition to Her Majesty in Council for special leave to cross-appeal from so much of the judgment of the Court of Appeal as ordered a new trial, seeking to contend that judgment ought to have been entered for the defendant. The defendant's petition was ordered to be heard together with the plaintiff's appeal and at the hearing their Lordships, without objection from counsel for the plaintiff, permitted counsel for the defendant to develop his arguments in support of the defendant's petition as fully as would have been appropriate if special leave to appeal had been granted.

The facts relevant to the issues raised by the plaintiff's appeal and the defendant's petition fall within a narrow compass. Bellevue Hospital is indeed an asylum or mental hospital and is well known in Jamaica as the only such institution on the island. Dr. Royes was at the material time a senior psychiatrist at the Bellevue Hospital. The plaintiff had never been admitted to Bellevue Hospital and he insisted throughout his evidence at the trial that he had never been a patient of Dr. Royes. However, after the close of the case for the plaintiff, his counsel, having been shown certain medical records by counsel for the defendant, admitted that the plaintiff had been a patient at St. Joseph's Hospital suffering from both shingles and paranoid depression and that his doctor, a Dr. Mendez, had called in Dr. Royes who had treated the plaintiff. The defendant relied on this admission alone to sustain the plea of justification.

It is pertinent also to mention that in reply to the original complaint on behalf of the plaintiff the defendant offered to publish in "The Star" an apology in the following terms:—

"In the issue of 'The Star' of Monday January 29, 1973, in a report of the hearing of the divorce petition brought in the Supreme Court by Lena Lee Wright against Charles Woodrow Wright it was reported that 'Petitioner said that respondent became ill in December, 1971 and was admitted to Bellevue Hospital as a patient of DR. KENNETH ROYES'.

"The Gleaner Company Limited is now satisfied that the Hospital to which the Petitioner had stated in her evidence in the case that the respondent had been admitted as a patient of Dr. Kenneth Royes was not Bellevue Hospital and hereby tenders its profound apology and regret to Mr. Charles Woodrow Wright for the error in the report."

Since the plaintiff's firm instructions to his attorneys at the time of this offer were no doubt to the same effect as his evidence, viz: that he had never been a patient of Dr. Royes, the offer was naturally refused.

Logically the first issue for consideration is that raised by the defendant's contention that the Court of Appeal ought, instead of ordering a new trial, simply to have reversed the judgment below and entered judgment for the defendant. The argument is in substance the

same whether it is put in the form that the judge ought to have withdrawn the issue of justification from the jury and held that on the admitted facts the defendant had justified the "sting" of the libel or in the form that the jury's decision on the issue of justification was perverse. It was submitted that no reasonable jury, properly directed in law, could find that the untruthful statement that the plaintiff had been a patient in Bellevue Hospital added anything of defamatory significance to the truthful statement that he had been treated by a psychiatrist for paranoid depression. Their Lordships are quite unable to agree. The forms of psychological disorder which may call for the services of a psychiatrist vary almost infinitely in degree. The words "paranoid depression" no doubt connote some form of mental illness, but it would be quite wrong, without the assistance of any medical evidence to elaborate particulars of the condition, to make any assumption as to its degree of severity. On the other hand, to have been a patient in the single mental hospital serving the needs of a substantial community may well carry the implication of grave mental disturbance. It was essentially for the jury to decide whether, and if so to what extent, the untrue statement went beyond the true statement in its capacity to injure the plaintiff's reputation. The question of substantial justification was properly left to them and, in the absence of misdirection, they were entitled to answer it as they did and to award damages in accordance with their view of the extent of the injury.

Turning now to the plaintiff's appeal, it is most unfortunate that no shorthand note was taken of the judge's summing-up. Two notes, not purporting to be verbatim, were taken on the defendant's side, one by a partner in the firm of attorneys acting for the defendant and one by a reporter employed by the defendant. These notes were submitted to the trial judge but returned by the registrar with an intimation that they could only be included in the record by agreement between the parties. Although no note appears to have been taken on the plaintiff's side, his attorneys declined to agree either of the defendant's notes. In the result the only material available to the Court of Appeal and to the Board relating to the summing-up is a document entitled "Outline of Judge's Summation" embodying a note made by the judge in advance of what he intended to say to the jury. It is prefaced by the statement: "The following is by no means exhaustive of my directions to the jury."

The critical passages in the judgment of Carberry J.A., dealing with the defendant's complaints of the summing-up in relation to the issue of justification, are the following:—

"The complaint here is that the learned trial judge did not sufficiently direct the jury as to what constituted the 'Sting' or 'gist' of the libel."

. . . .

"Remembering that what we have here is the 'outline' of the summing-up, and that what is alleged in effect is 'non-direction' we have found it difficult to decide."

. . . .

"While the learned trial judge did direct the jury on many of the matters relating to the plea of justification that have been mentioned above, we came to the conclusion that he did not sufficiently direct them as to what was the gist of the libel, and invite their attention to the various 'gists' that might be alleged to be fairly found in it, and as to whether the Defendant/Appellant had proved substantially that which was complained of. As conducted the case presented certain difficulties. It may be doubtful if the jury fully appreciated the admission that was made by the Plaintiff's counsel, or understood

the extent to which it had been shown that the Plaintiff had denied or concealed the truth, wittingly or unwittingly in the witness box, and if unwittingly, did this not in itself lend support to the charge that he was 'mentally ill'? The question of whether there has been substantial justification is however one for the jury, properly directed. We are not, I think, entitled to substitute our own views upon the matter, and on this score we were of opinion that there must be a new trial."

Dealing with complaints of the judge's directions on the issue of damages, the Court of Appeal "inclined to the view" that the directions were inadequate, but, having ordered a new trial on other grounds, expressed no opinion on the contention advanced for the defendant that the damages awarded were excessive.

Their Lordships share to the full the difficulty felt by the Court of Appeal in having to adjudicate upon the validity of complaints directed at a summing-up of which the only note is one prepared by the judge for his own use as an aide-memoire in addressing the jury. The difference between such a note and what the judge in fact says when he delivers his summing-up may be considerable. It may be a misfortune for the defendant that no better material is available, but it has to be remembered that it is always for the party who invokes the jurisdiction of an appellate court to make good his complaint of error vitiating the decision of the court which he seeks to upset. Moreover to show a misdirection or a non-direction was not by itself sufficient to entitle the defendant to succeed in the Court of Appeal. Rule 19(2) of the Jamaica Court of Appeal Rules, 1962 provides:—

"A new trial shall not be ordered on the ground of misdirection . . . unless in the opinion of the Court some substantial wrong or miscarriage has been thereby occasioned."

In the argument before the Board criticism was directed at a number of passages in the judge's note dealing both with justification and damages. Their Lordships do not find it necessary to examine these in detail although they recognise that some of the points of criticism are valid. In the end, the essential issue is whether it is legitimate to infer from the judge's note, considered as a whole and in the light of the jury's verdict, that the judge failed to bring home to the jury the real questions they had to decide, viz: whether the allegation that the plaintiff had been a patient at Bellevue involved a defamatory imputation going substantially beyond that which could be justified by the admission that the plaintiff was treated by Dr. Royes for paranoid depression and, if so, what damages would be appropriate to reflect that additional defamatory element, bearing in mind the apology which had been offered and refused.

Two passages from the judge's note are of particular significance. The first passage reads:—

"He [the plaintiff] was vigorously cross-examined by Mr. Hill and he denied that he was ever treated by Dr. Royes at any time. He admitted he was ill and was admitted to Saint Joseph's Hospital on August 5-18, 1972, for shingles but he denied that he was ever a patient of or was treated by Dr. Royes and plaintiff maintained that position to the end of his evidence.

"It was, however, later conceded by plaintiff's counsel that plaintiff was treated by Dr. Royes while in Saint Joseph's Hospital. He was in the hospital for shingles and paranoid depression. He was referred to Dr. Royes by Dr. Mendez his doctor, and Dr. Royes came and visited him on more than one occasion and gave him injection and treatment."

In view of this passage, their Lordships can find, with respect, no sufficient ground for the doubt expressed by the Court of Appeal as to whether the jury appreciated the admission made by the plaintiff's counsel or understood the extent to which it had been shown that the plaintiff had denied or concealed the truth.

The second passage reads:—

“ You have to consider the article as a whole with particular reference to the words complained of and consider every material part of the alleged libel. You also consider the evidence and say if you are satisfied that the defendant has proved true every material part of the alleged libel.

“ You will have to say whether the defendant has justified the main charge, the gist of the libel. Has the substance of the libellous statement been justified to your satisfaction?

“ If yes, then the libel would be justified.

“ Again, if you find any distinct charge against plaintiff the truth of which not proved, can you say that that portion does not materially injure the plaintiff's reputation, having regard to the truth of the remaining charges? If yes, then the libel is justified.”

Again, in their Lordships' respectful view, this passage goes far to refute the Court of Appeal's conclusion that the judge did not sufficiently direct the jury as to the gist of the libel.

The judge's note of the directions he proposed to give on the issue of damages is exiguous and is for this reason easy to criticise. But their Lordships are clearly of opinion that if there had been neither partial justification nor an offered apology the damages likely to be awarded would have been substantially larger than \$2,000. This opinion in turn assists in leading to the conclusion that despite any shortcomings there may have been in the judge's summing-up, the defendant is not in a position to establish that any substantial wrong or miscarriage was thereby occasioned.

Their Lordships will therefore humbly advise Her Majesty that the defendant's petition for special leave to cross-appeal be granted but that the cross-appeal be dismissed; that the plaintiff's appeal be allowed, the Order of the Court of Appeal be set aside and the judgment of the Supreme Court be restored; and that the defendant pay the plaintiff's costs of the proceedings before the Court of Appeal and this Board.

In the Privy Council

CHARLES WOODROW WRIGHT

v.

THE CLEANER COMPANY LIMITED

**DELIVERED BY
LORD BRIDGE OF HARWICH**

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