

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the Petition for special
leave to appeal of Hastie v. Pigot, from the
High Court of Calcutta; delivered December
17th, 1884.*

Present:

LORD FITZGERALD.

SIR BARNES PEACOCK.

SIR ROBERT COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

THIS is an application upon behalf of the Defendant in an action of libel for leave to appeal from the decision of the High Court at Calcutta to Her Majesty in Council. An application had been made to a Judge of the High Court for leave to appeal, which was refused.

The action is for Libel. The Defendant put in the usual defences in a very general way; still he got the full benefit of them. There can be no doubt that the publications in question were of a libellous character, but their Lordships abstain from entering on or criticising them except so far as to say that, if unprotected by absolute privilege and unjustified in fact, the libel was a most cruel one. The High Court increased the damages to Rs. 3,000, and upon that question of damages their Lordships would, if it had been necessary to decide it, have come to the conclusion that if the libel was not justified in fact the damages are moderate.

Their Lordships have to deal with three questions; first, was the occasion on which this libel was published a privileged occasion? Next, if the occasion was privileged, has that privilege been lost by any evidence in the case of express malice

or ill-will, or indirect or wrong motive on the part of the Defendant? and the third and more important question is, whether the plea of justification had been in fact satisfactorily proved? The Judges of both Courts held that the occasion was not privileged. Their Lordships do not now propose to enter into that question. They assume, for the purposes of this Petition, in favour of the Petitioner, and without pronouncing any judgement upon it, that the occasion was privileged. The case was not in the Court below or before their Lordships put so high as a case of absolute privilege, but rather of that qualified privilege which may be displaced by proof that the occasion was used for an indirect and wrong purpose. It is in that light their Lordships deal with the case.

Their Lordships have then to consider whether there was sufficient evidence of malice, that is to say of ill-will, on which the Court below might reasonably act as displacing the alleged qualified privilege. If the libel was published by the Defendant from a sense of duty, in the honest belief of the truth of the matter contained in the libel, and without any sinister or indirect motive, he is entitled to protection. Their Lordships have, however, come to the conclusion, that there was evidence of ill-will or indirect motive upon the part of the Defendant sufficient to be considered by the Judges in both Courts below, and on this evidence the Judges came to the conclusion that there was proof of malice in fact.

Having thus disposed of the questions arising on privilege, their Lordships have to consider whether the justification put forward on the part of the Defendant was proved in its substantial particulars. Upon that matter there was a difference in the two Courts. Mr. Justice Norris, who presided in the Primary Court, and who heard the witnesses, came to the conclusion that the justification, though not proved in all its parts,

had been substantially proved, and he awarded to the Plaintiff nominal damages only. No doubt the decision of that learned Judge, who saw and heard the witnesses, is entitled to great weight. But their Lordships, upon carefully examining the course of the trial and the evidence before Mr. Justice Norris, have not failed to perceive that there was much to detract from the value which their Lordships usually give to the view of the Primary Judge on the evidence before him. There was, for instance, great hardship to the Plaintiff in permitting matters not in issue to be put forward at the very close of the trial. Mr. Fish, who was one of the first witnesses examined, but examined merely as to some formal and documentary matters, is allowed to be re-produced at the eleventh hour to spring a mine upon the Plaintiff as to an important charge which was not at all the subject of the libel or of the defence. There was such a miscarriage in the admission of this and some other evidence, and in not noticing the failure on the part of the Defendant to substantiate some other material allegations contained in the libel and justification, that if their Lordships adopted the conclusion generally which Mr. Justice Norris arrived at, it would be their duty, if they heard the Appeal, to send the case to a new trial on the ground of this miscarriage. Their Lordships abstain from making any unnecessary observations on the evidence in the cause. It is enough to say that they see no sufficient reason for questioning the finding on the facts by the High Court.

Their Lordships therefore are unable to advise Her Majesty to give the Defendant leave to appeal to Her Majesty in Council.

