

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
the Australian Newspaper Company Limited  
v. Alfred Bennett, from the Supreme Court of  
New South Wales, delivered 9th April 1894.*

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Present :

THE LORD CHANCELLOR.

LORD WATSON.

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

[*Delivered by the Lord Chancellor.*]

THIS appeal arises in an action brought by the Plaintiff, who is the manager, conductor, and part proprietor of a newspaper known as the "Evening News," printed and published in the City of Sydney, against the Appellants, the Australian Newspaper Company Limited, for a libel alleged to have been published in a newspaper conducted by them, called the "Australian Star."

The action came on for trial before Mr. Justice Stephen and a jury of four persons, and the jury by a majority of their number found a verdict for the Defendants. An application was made to the full Court on behalf of the Plaintiff, for a new trial, and a rule nisi was granted, and on the argument of the rule it was made absolute by a majority of two to one of the learned Judges who composed the Court, Mr. Justice Stephen, the learned Judge who had tried the action, dissenting.

It appears that in the special edition of the "Evening News," published on the evening of the day on which a boat-race took place between two oarsmen named Kemp and McLean, the "Evening

News, printed and published in the city of Sydney, against the appellants, the Australian Newspaper Company, Limited, for a libel alleged to have been published in a newspaper conducted by them called the Australian Star.

The action came on for trial before Stephen, J., and a jury of four persons, and the jury by a majority of their number found a verdict for the defendants. An application was made to the full Court on behalf of the plaintiff, for a new trial, and a rule nisi was granted, and on the argument of the rule it was made absolute by a majority of two to one of the learned judges who composed the Court, Stephen, J., the learned judge who had tried the action, dissenting.

It appears that in the special edition of the Evening News, published on the evening of the day on which a boat-race took place between two oarsmen named Kemp and McLean, the Evening News published a statement that McLean had won the boat-race; but in the details which followed this statement it appeared that the race had really been won by Kemp. It was alleged that in another edition, published earlier on the same evening, the statement that McLean had won the race was not followed by any such details. On the latter point the evidence was conflicting. The Australian Star thereupon published certain paragraphs with reference to this incident. The first of these paragraphs contains the passage upon which the judgment of the Court below has proceeded. It is in the following terms: "According to the Market Street Evening Ananias, both Kemp and McLean won the boat-race yesterday. Poor little silly noozy." Windeyer, J., who pronounced the judgment of the majority of the Court, said: "Much of the matter complained of in the plaintiff's declaration, however low and vulgar in style it may have been considered by the jury, may have been regarded by them simply as badinage, imputing no dishonourable conduct to the plaintiff, and it is impossible for us to say that such a view might not be taken by reasonable men called upon to decide whether the article was or was not a libel. What the plaintiff, however, chiefly complains of is that portion of the writing declared upon contained in the words, 'According to the Market Street Evening Ananias, both Kemp and McLean won the boat-race yesterday.'" So that the judgment of the Court below has proceeded exclusively upon that part of the alleged libel. It does not, therefore, appear necessary for their Lordships to do more than deal with that portion of the alleged libel which alone induced the majority of the judges to come to the conclusion that there ought to be a new trial.

The innuendo attached to the words which have just been read, and upon which the Plaintiff chiefly placed reliance, is as follows:—"That the matter which the Plaintiff was in the habit of publishing or allowing to appear in the said 'Evening News' was such, and his conduct and management of the said 'Evening News' was such, that the said 'Evening News,' by reason of the publication of such matter, and by reason of such conduct and management on his part, had become notorious for wilfully false and lying statements intended to deceive the public, and that the said newspaper of the Plaintiff was wholly unfit to be sold to, or read, or trusted by the public."

It is not disputed that, whilst it is for the Court to determine whether the words used are capable of the meaning alleged in the innuendo, it is for the jury to determine whether that meaning was properly attached to them. It was therefore the province of the jury in the present case to determine whether the words used were written of the Plaintiff, and whether they bore the defamatory sense alleged.

Mr. Justice Windeyer observed in the course of his judgment that he admitted that the Court would only be justified in reversing the finding of the jury "if their decision upon that point is such as no jury could give as reasonable men." This is a correct statement of the law. Their Lordships have not, any more than the Court below had, to determine in the present case what is the conclusion at which they would have arrived, or what is the verdict they would have found. The only point to be determined is, whether the verdict found by the jury, for whose consideration it essentially was, was such as no jury could have found as reasonable men.

The judgment of the Court below was founded on the use of the word "Ananias." Windeyer, J., has expressed the opinion that only one meaning could be attributed to that word, that everyone must understand it to impute wilful and deliberate falsehood, and that therefore the mere use of the word "Ananias," which necessarily involves such an imputation, could not reasonably be held to be innocent, or to be otherwise than intended to cast this imputation upon the plaintiff. Even admitting that the natural effect of the use of the word "Ananias" standing alone would be to convey the imputation suggested, the learned judge appears to their Lordships, with all respect, to have lost sight of the fact that people not unfrequently use words, and are understood to use words, not in their natural sense, or as conveying the imputation which, in ordinary circumstances, and apart from their surroundings, they would convey, but extravagantly, and in a manner which would be understood by those who hear or read them as not conveying the grave imputation suggested by a mere consideration of the words themselves. Whether a word is, in any particular instance, used, and would be understood as being used, for the purpose of conveying an imputation upon character must be for the jury.

In the present case it is impossible to consider the use of the word detached from all that accompanied it in the newspaper issued by the defendants. The language used must be looked at as a whole in considering whether the jury could reasonably come to the conclusion that the use of the word was not intended to convey, and that those reading the newspaper would not understand it as conveying, the serious imputation suggested.

It is to be observed that the expression "Ananias" is used in relation to the newspaper, and not to the Plaintiff individually. No doubt offensive language applied to a newspaper may cast a reflection, and be understood as casting a reflection, upon persons connected with the newspaper. But it clearly cannot be maintained that every imputation upon a newspaper is a personal imputation upon everybody connected with the newspaper. Whether it is an imputation which would attach to any individuals, and, if so, to whom, must depend in each case upon the language used and upon the circumstances.

The suggestion contained in the innuendo in the present case, which has been adopted by the Court below, is that the use of the word imputed to the Plaintiff that he was, in his conduct of the newspaper, guilty of making wilfully false statements.

Now, the statement in question was an erroneous statement as to the winner of the boat-race. There could be no motive suggested for wilfully making such a statement, knowing it to be false. To do so would only be to injure the credit and reputation of the newspaper. Would anyone of the public, when a statement of this sort was commented upon, suppose that the suggestion made was that the falsehood had been inserted on purpose? It seems difficult to understand how anyone could arrive at that conclusion. The paragraph, which has been already quoted, says: "According to the Market Street Evening Ananias, both Kemp and McLean won the boat-race yesterday." That, of course, refers to the "Evening News" having stated an impossibility as having occurred. When two men were racing against one another, both could not have won the race. One of those statements must be false. That would be the interpretation of it, or at all events (which is all

that need be said) it might be the interpretation of it by anyone who read it, and it is in connection with that statement that the word "Ananias" is used.

The plaintiff was the part-proprietor, manager, and conductor of the newspaper. He was not the editor. There was no evidence given to shew that he would be supposed to be even responsible on any particular occasion for the literary or news contents of his newspaper. The only reference to him in the article complained of is the statement, "It will result in the defeat of several reporters and several dozen other employes, if we know Alfred aright." It is not disputed that by "Alfred" would be understood to be meant the plaintiff, the proprietor of the newspaper. So far, therefore, from suggesting that this statement was a wilfully false statement, either inserted or countenanced by the plaintiff, it was open to the jury to consider whether, read in connection with these words, the language used would not indicate that, whoever was responsible for the statement, no such responsibility rested upon the plaintiff, but that he would make those who were responsible for the blunder feel the result of it, by the loss of their employment.

The question therefore is whether in all these circumstances it can be said that a jury of reasonable men could not possibly find that the article, although it contains that which had much better not have been published, did not reflect upon the plaintiff's character, or even upon his conduct in relation to the newspaper. The jury have so found, and their Lordships are of opinion that it would be exceeding the legitimate function of the Court if the verdict were set aside and a new trial ordered, that the Court would then in reality be taking upon itself the function which the law has committed to the jury, of

looking at the alleged libellous matter as a whole, and determining whether it is published of and concerning the Plaintiff, and whether it bears the innuendo which the Plaintiff seeks to attach to it.

For these reasons their Lordships are of opinion that the rule absolute should be set aside and the rule nisi discharged, and that the Respondent should bear the costs of the rule absolute, and the costs of this appeal. Their Lordships will humbly advise Her Majesty accordingly.

