

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of William Ferguson Massey v. The New Zealand Times Company, Limited, from the Court of Appeal of New Zealand; delivered the 17th May 1912.*

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PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD ATKINSON.

LORD SHAW.

[DELIVERED BY LORD ATKINSON.]

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This is an Appeal from a Judgment of the Court of Appeal of New Zealand, dated the 9th of August 1911. That Court, composed of four Judges, being equally divided in opinion, the Judgment of the Supreme Court of New Zealand, dated the 19th of May 1911, which was appealed against, was, under the provisions of the 58th section of the Local Judicature Act, 1908, deemed to be affirmed. By this last mentioned Judgment a motion instituted on behalf of the Appellant, the Plaintiff in an action of libel, to have the verdict found for the Respondent, the Defendant in that action, and the Judgment entered thereon set aside and a new trial granted on several grounds, one of which was that the verdict was against the weight of evidence, was dismissed. On the hearing before their Lordships this last mentioned point was the only point relied upon. The alleged libel con-

sisted of a cartoon published on the 3rd of December in the Respondent's newspaper *The New Zealand Times*.

The Plaintiff in his statement of claim alleged that he was depicted in the cartoon, and that by it the Defendant meant to allege, and did in fact allege, so as to be understood by those who saw it, that the Plaintiff was responsible for or had taken part in the free distribution of a certain scurrilous and improper pamphlet reflecting on the then Prime Minister of New Zealand, which had been printed and published in the year 1910 in Auckland, Wellington, and elsewhere in New Zealand, and had thereby been guilty of a mean and disreputable act and was a liar.

The Defendant in his statement of defence denied, amongst other things, that this pictorial representation or cartoon was published of and concerning the Plaintiff, and pleaded in addition a special plea to the effect that the cartoon was a fair comment made in good faith and without malice upon a matter of public interest, namely, the action of a certain political party in New Zealand, and was intended to depict and condemn the political action of this party or of the members of it who were making and circulating charges of improper conduct against the members of the then and previous Administration. Issues were knit upon these pleadings. It was not disputed that the political party referred to in this defence was the regular or official Opposition in the House of Representatives of New Zealand, or that the Plaintiff was the leader of that Opposition. At the trial the question as to whether the cartoon was published of and concerning the Plaintiff resolved itself into whether the figure of the man who was depicted as in the act of harnessing a donkey,

labelled "Ananias," to a waggon on which were written the words "We are the Party," represented the Plaintiff or not. That and the question whether the cartoon in effect was a personal attack on the private character and action of the Plaintiff of the nature complained of in the statement of claim, or an attack or comment on the action of the political party of which the Plaintiff was the leader in reference to the matter indicated in the statement of defence, were the two points on which the whole controversy turned. The waggon to which the donkey is being attached is represented as being laden with several bundles or packages labelled respectively "private calumny," "dead men's characters," "expense," "startling revelations," "defamation," "Tammany," and "pamphlets free." And upon this last bundle is represented the figure of a woman sitting labelled "scandal mongering." There is also a bucket on the waggon labelled "mud," and underneath the cartoon are written the words—

"Hitch your waggon to a star.--Emerson."

"Hitch your waggon to a lie.—Dr. Findlay's Amendment."

It is by consent admitted that by the words "pamphlets free" the scurrilous pamphlets already referred to are meant to be indicated.

It appears that on the 30th of November 1911 a discussion took place in the House of Representatives in reference to this scurrilous pamphlet, which, it was alleged, had been distributed free. The Plaintiff then repudiated any connection, direct or indirect, with its production or distribution. That repudiation, it would appear from the Plaintiff's own evidence, was accepted by some, if not by all, of the supporters of the Government. At all events it was accepted by the Respondent, who, on the

next day, the 1st of December, published in his newspaper the following paragraph:—

“ A Poisonous Pamphlet:—

“ Someone is spending money to secure a circulation which could not be obtained by direct sale. The official Opposition has vehemently denied any connection with these dubious methods, and this disclaimer will be accepted unreservedly as it is made, but what the official Opposition cannot deny is that in every electorate from the North Cape to the Bluff supporters of their party are putting this printed calumny to the use which Mr. Massey himself would disdain to give countenance. Mr. Massey and his colleagues have of course more reason to be annoyed at this than we have, for such tactics are obviously destructive of their intention. Still the fact cannot be disputed any more than can a second fact that during the last couple of years the whole force of the Opposition campaign has been directed to framing a general and particular criticism of the Government resting upon allegations and innuendos of dishonesty, fraud, and deceit. The country sickened of it long ago.”

Now, while the official Opposition are in this paragraph exculpated, their supporters in the different electoral districts in the country were accused of putting this pamphlet to a use to which the Plaintiff and his colleagues would disdain to give countenance. And the further charge is made against the Opposition that their campaign has been directed to framing against the Government an indictment based upon allegations and innuendos of dishonesty, fraud, and deceit. So that while the paragraph exculpates the Plaintiff and his colleagues from the one charge of spending money to circulate this pamphlet, it inculpates the party he leads in the charge of having been guilty of political action such as he describes.

The Plaintiff in his cross-examination admitted that he, as leader of the Opposition, denounced the Government as “disreputable and dishonest,” that he had accused them of

“Tammanyism,” by which he said he meant that they had withdrawn advertisements from newspapers that criticised them, and given advertisements to newspapers that had supported them, and had appointed to the Upper House as members persons who had given financial support to the newspapers that supported them, though these persons could not claim to have done public service. Now all this was political party warfare, matters or a matter of public interest upon which any member of the public in New Zealand was entitled to comment fairly and in good faith without malice; and one finds on referring to the cartoon that one of the bundles is labelled with the word “Tammany,” evidently alluding to this charge made by the Plaintiff as leader of one party against the other. Well, it appears from the evidence that Dr. Findlay, the Attorney-General, made a speech in the Legislative Council on the very day on which this paragraph was published, in which he parodies Emerson’s celebrated saying and accused the Opposition of having “hitched their waggon to a lie,” or told their followers to “hitch their waggon to a lie”—whichever it was. A report of this speech was not given in evidence. It was described by the Plaintiff as a “great” speech, as a “clever” speech, and by his Counsel “as an epoch making speech,” whatever that may, in this connection, mean. It is to be regretted that their Lordships have not had a report of the speech before them, because if they had been thus favoured it might have appeared clearly and definitely what was the particular lie to which the Opposition were exhorted to hitch their waggon, or to which they were accused of having hitched their waggon. As it is, it is left somewhat in doubt whether the lie consisted of a false statement contained in the scurrilous pamphlet,

or was treated as embodied in the charge of "Tammanyism" made by the Plaintiff against the Government, or was involved in the repudiation by the Plaintiff of any share in the production or distribution of this pamphlet.

The Plaintiff in his evidence on cross-examination stated that the words "hitch your waggon to a lie" referred to the party of which he was a member. In one sense an accusation against a party is an accusation against every member of which that party is composed, but that is not the sense in which, according to the innuendo, the accusation in the libel is made. By the innuendo the charge is made to apply directly to the Plaintiff personally, not indirectly as a member of the party libelled.

The leading Counsel for the Plaintiff in his opening statement used the expression "political skit," apparently, to distinguish a comment made upon the conduct and action of a political party, a matter of public interest, from a personal attack made upon the Plaintiff, and that phrase, or something equivalent to it, was apparently used throughout the hearing and was evidently adopted to some extent by the jury.

They found first, that the figure in the cartoon (*i.e.*, the figure hitching the donkey to the waggon) represented the Plaintiff, and, secondly, that the cartoon "was a political cartoon pure and simple and was not libellous." The meaning of this second finding must, as it appears to their Lordships, be taken to be that the cartoon did not bear the meaning put upon it by the innuendo; but was, as set forth in the defence, a *bonâ fide* comment made without malice upon a matter of public interest, namely the conduct and action of the Opposition.

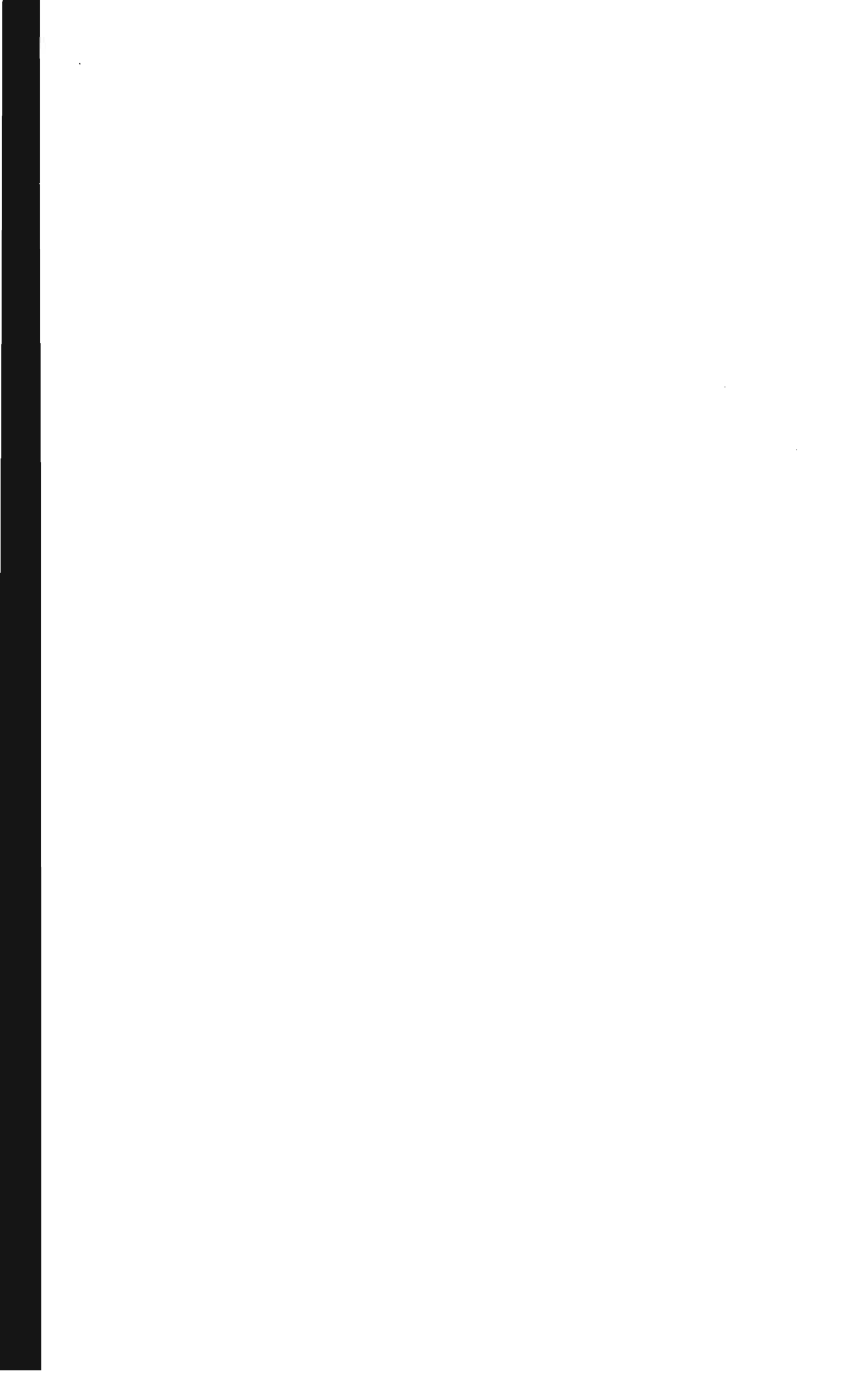
It is urged, however, in argument that these findings are inconsistent; that though the cartoon might upon its face be reasonably

susceptible of bearing either the meaning put upon it by innuendo or that put upon it in the statement of defence, that the finding of the jury that the figure hitching the donkey to the waggon represented the Plaintiff was crucial, and that, having regard to it, the cartoon must necessarily convey the meaning put upon it by the innuendo and none other. It appears to their Lordships that this line of argument is quite fallacious. The figure of the Plaintiff, they think, may well have been introduced as typical of the party and to represent the party, and not at all for the purpose of fixing a specific charge of personal misconduct upon him such as is complained of. Mr. Bowring, one of the Plaintiff's witnesses, admitted upon cross-examination that when first he saw the cartoon he thought it implied that the Plaintiff was himself responsible for everything indicated by the labels upon the packages, but it had since occurred to him that the cartoon referred to the Opposition Party. Another of his witnesses, Mr. Von Haast, deposed that as he understood Dr. Findlay's expression, "Hitch your waggon" &c. referred to the Opposition Party. A third witness, Mr. McBeth, himself an artist, stated in cross-examination that if he wanted to typify the Opposition he would do so by their leader; that to typify the party generally he might use their leader; that the cart as he understood it was the party cart; the cargo the cargo of members of the party, and represents either the stock in trade of the party, or the stock in trade of the man who drives the cart. And the Plaintiff himself in his cross-examination stated that the suggestion in the libel is that the party were responsible for the distribution of the pamphlet, which meant that the funds for its distribution were found by the party, and that he should take

a considerable part in this. Having regard to this evidence it is in their Lordships' view impossible to hold that the jury could not as reasonable men have come, honestly and consistently, to the conclusions to which they have come on both the questions submitted to them. They are therefore of opinion that the Judgment of the Supreme Court of New Zealand was right and should be affirmed, and this Appeal be dismissed; and they will humbly advise His Majesty accordingly. The Appellant must pay the costs of the Appeal.

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In the Privy Council.

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WILLIAM FERGUSON MASSEY

v.

THE NEW ZEALAND TIMES COMPANY,  
LIMITED.

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DELIVERED BY LORD ATKINSON.

LONDON:

PRINTED BY EYRE AND SPOTTISWOODE, LTD.  
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1912.