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No. 1 of 1948.

# In the Privy Council.

UNIVERSITY OF LONDON  
W.C.1.

## ON APPEAL

-3 OCT 1956

FROM THE SUPREME COURT OF BERMUDA.

INSTITUTE OF ADVANCED  
LEGAL STUDIES

BETWEEN

SAMUEL SEWARD TODDINGS

*Appellant*

44225

AND

EDMUND GRAHAM GIBBONS

*Respondent.*

## Case for the Appellant.

RECORD.

10 1. This is an appeal, by leave of the Supreme Court of Bermuda given on the 2nd day of January 1948 against an Order for a new trial made by the Supreme Court of Bermuda on the 27th day of October 1947, the action having been heard before the Chief Justice of Bermuda and a Special Jury on the 6th and 7th days of October 1947, when judgment was entered for the Appellant with costs.

2. The Respondent who was the plaintiff in the action is and was the proprietor of a number of shops and stores in Bermuda and elsewhere. The Appellant who was the defendant in the action is and was the proprietor and publisher of a Bermudian daily newspaper "Mid-Ocean  
20 News." In the said action the Respondent claimed from the Appellant damages laid at £7,500 in respect of an alleged libel contained in the issue of the Appellant's said newspaper dated the 20th day of January 1947.

3. By his defence the Appellant averred that the publication p. 5. complained of was not defamatory and in the alternative pleaded justification and fair comment.

4. In the course of his summing up the Chief Justice said :—

" Now whether these words, facts and comments are defamatory  
" or not is a matter entirely for you, it is for you to say ' these words  
" ' are defamatory—no they are not defamatory,' taking into p. 28, l. 24.  
30 " consideration all the evidence which is before you, but it is for the  
" Judge to say, before the matter is left to the jury, whether the  
" words complained of are capable of a defamatory meaning and  
" I so decide."

At the conclusion of his summing up the Chief Justice put the following questions in writing to the jury, to which the jury returned the answers

severally put against each question, or failed to return any answer as the case may be :—

p. 35.

QUESTION.	ANSWER.	
(1). Do the words complained of amount to a defamatory statement? Yes or no.	No.	
(2). Are the words complained of— (A) Statements of fact or (B) Expressions of comment or (C) Partly one or partly the other? Read the Editorial carefully and you will be able to answer that.	Part of paragraph (c) partly comment and partly facts.	10
(3). In so far as you find that the words are statements of fact are such statements of fact true? Yes or no.	No answer.	
(4). In so far as you find that the words are comment, does such comment add any sting to the libel? Yes or no.	No answer.	
(5). (A) If you find that such comment add sting to the libel is such comment correct—that is to say true?	No answer.	20
(B) Does such comment exceed the limits of fair comment?	No answer.	
(C) Are the words complained of published of the plaintiff?	No.	
(D) Are the words complained of published of the plaintiff in way of his business?	Yes.	
(E) Do the words complained of convey a reflection on the plaintiff calculated to disparage or injure him in that business?	No.	30
(6). Damages	Nil.	

NOTE.—You need not consider question (5) (B)—the question of fair comment if you find statements of fact are true and a comment does not add sting to the libel or is correct—there is your justification and that is the best I can do to combine the two defences.

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p. 36, l. 17.

5. Upon the said answers being read Counsel for the Appellant moved for judgment for the Appellant with costs submitting that as the answer to the first question was “no” there could not be any libel and that the action failed. The Chief Justice said that he agreed and accordingly entered judgment for the Appellant with costs. Counsel for the Respondent thereupon moved forthwith for a new trial and the Chief Justice reserved that motion for argument.

6. On the 27th day of October 1947 the motion for a new trial was heard and the judgment of the Chief Justice was as follows :—

p. 37, l. 12.

“In this case there is abundant evidence that the words 50  
“complained of constituted a libel in a full sense of the

“interpretation of the term. There is nothing in the pleadings to indicate that there was any dispute on this point. Indeed the defence has implied an admission by founding a defence on ‘justification’ and ‘fair comment’ both of which if satisfied are good defences for an action for libel.

10 “Consequently I hold that the answer to the first question given in the negative is an answer such as reasonable men, on the evidence before them, ought not and could not have arrived at. Holding that opinion it is my view that the motion should be affirmed and a new trial ordered.”

7. On the 24th day of November 1947 the Chief Justice gave Conditional Leave to Appeal to His Majesty in Council pursuant to Section 2 (2) of the Appeals Act, 1911, Final Leave to Appeal to His Majesty in Council being given on the 2nd day of January 1948.

8. It is submitted that the issue of “libel or no libel” was essentially and peculiarly one for the jury, and that by their answers to the questions left to them by the Chief Justice the jury showed beyond a peradventure, and having been properly directed by the Chief Justice, that they did not regard the publication as a libel, and that even though the Chief Justice 20 did not agree with the jury, it was not a case in which the verdict should have been interfered with.

9. The Appellant submits that the Order for a new trial was wrongly made for the following among other

## REASONS

1. BECAUSE there was evidence upon which the jury could hold that the publication complained of was not defamatory of the Respondent and because the jury so held.
- 30 2. BECAUSE the Chief Justice both in his summing up and in the questions put to the jury properly left to the jury the question as to whether the publication complained of was defamatory and because the jury held that it was not defamatory.
3. BECAUSE the Chief Justice in his reasons for ordering a new trial stated incorrectly that there was nothing in the pleadings to indicate that there was any dispute by the Appellant that the publication complained of was defamatory.
- 40 4. BECAUSE the Chief Justice in his reasons for ordering a new trial stated erroneously that as the Appellant had pleaded “justification” and “fair comment” the Appellant thereby implied an admission that the words complained of were defamatory.

MELFORD STEVENSON.

GEOFFREY H. CRISPIN.

In the Privy Council.

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