
(1872) 12 CAL CK 0001

Calcutta High Court

Case No: None

F.F. Wyman

APPELLANT

Vs

A. Banks

RESPONDENT

Date of Decision: Dec. 9, 1872

Judgement

Sir Richard Couch, Kt., C.J.

This is an appeal from the decision of Macpherson, J., rejecting a plaint in an action brought by the plaintiff F.F. Wyman for a libel which he alleged had been published concerning him in a newspaper called the Englishman Saturday Evening Journal. Some allusion was made by Mr. Woodroffe, who appeared for the appellant, to the plaint having been rejected by the learned Judge without hearing the argument of Counsel. We understand that no application was made to the learned Judge to hear Counsel. If any such application had been made, Counsel would have been heard. We have had the advantage of hearing Counsel with regard to the plaint being admitted, and were able to form our judgment after the matter has been argued. The alleged libel is set out in the plaint, and there are also allegations which show that F.F. Wyman is a gentleman filling a public capacity, and that the facts which are commented on in the newspaper are true. The question is whether the plaint shows a cause of action. Now, in an action for libel, it is a question for the Court whether the Words which are complained of constitute a ground of action; and for that reason the words alleged to be libellous are required to be set out in the declaration or plaint. That is the law in the Courts in England, and the same law must prevail here, although the procedure is somewhat different. The Judges in the case of Wright v. Clements 3 B. & A., 506 clearly state this. Lord Tenderden says:-- "In actions for libel, the law requires the very words of the libel to be set out in the declaration, in order that the Court may judge whether they constitute a ground of action; and unless a plaintiff professes so to set them out, he does not comply with the rules of pleading." And Holroyd, J., says:-- "Where a charge, either civil or criminal, is brought against a defendant arising out of the publication of a written instrument, as is the case in forgery or libel, the invariable rule is that the instrument itself must be set out in the declaration or indictment; and the reason of that is that the defendant may have an opportunity, if he

pleases, of admitting all the facts charged, and of having the judgment of the Court whether the facts stated amount to a cause of action, or a crime. For it is clear that, when it can be shown distinctly what the instrument is upon which the whole charge depends, that instrument must be shown to the Court, in order that they may form their judgment. A defendant is not bound to put the question as a combined matter of law and fact to the jury, but has a right to put it as a mere question of law to the Court." Another English case in which this rule is recognized is *Blagg v. Sturt* 10 Q.B., 899. That is an answer to the argument of Mr. Woodroffe that at all events this question must be submitted to a Judge of this Court acting both as judge and jury, and ought not to be determined on the question whether the plaint should be admitted. If the words which are set out in the plaint or declaration are not a libel, the plaintiff cannot by alleging, as he has done in the present plaint, "that the defendant printed and published them, intending to injure the plaintiff and to bring him into public scandal and disgrace, and to expose him to public scorn and ridicule, and to cause it to be suspected and believed that the plaintiff was a dishonest person, and had been actuated by sinister and fraudulent motives," make them one; nor can the plaintiff by alleging that words are spoken ironically make them libellous, if they do not appear to the Court to be so. The rule that the plaintiff cannot thus extend the meaning of words beyond the in natural import is clearly shown by the case of *Wheeler v. Haynes* 9 A & E., 286. This Court sitting now in appeal from the decision of Macpherson, J., has to do what Macpherson, J., had to do, to see whether the alleged libellous matter which is set out in the plaint is really libellous. If it is not, there is no ground of action, and the plaint ought not to be admitted. In determining whether the word "honest" is used ironically, and it is meant that the plaintiff was dishonest, we must look at the whole article. We must look at the context, as well as the words which are said to be ironical. Looking at the whole article, it appears to me that the first part about Diogenes cannot be understood to mean that F.F. Wyman was a dishonest man. I do not think it can at all fairly be understood to bear that meaning; and with regard to the latter part of the article, where the writer says:-- "In order fully to appreciate the remarkable character of F.F. Wyman's offer, it should be understood that the Company has suffered in the last two years a cash loss of Rs. 4,000, and that during the last twelve months its business had fallen off to the extent of upwards of Rs. 12,000. After this I would suggest that, when he brings in his bill to reform the Municipality by the introduction of the elective principal some member of the Council should propose as an amendment that the entire control of our municipal affairs should be vested in F.F. Wyman:" that is nothing more than a comment which the writer might fairly make on the facts which he had stated. I can see nothing in this article which goes beyond a fair comment on the acts of F.F. Wyman as a public man, and the first part about Diogenes is merely an attempt by the writer to make a little fun at the expense of F.F. Wyman. I cannot look upon this as a libellous article. I think that the decision of Macpherson, J., was right. The appeal must be dismissed.