(1920) 06 CAL CK 0046

Calcutta High Court

Case No: Appeal from Original Civil No. 28 of 1919 in Civil Suit No. 196 of 1918

W.S. Irwin		APPELLANT
	Vs	
D.J. Reid		RESPONDENT

Date of Decision: June 7, 1920

Final Decision: Dismissed

Judgement

Mookerjee, A.C.J.

1. The subject-matter of the litigation, which has culminated in this appeal, consists of three letters published by the Appellant in the Statesman and the Englishman newspapers. The first letter appeared in the Statesman on the 21st October 1917 and in the Englishman on the following day. The second letter appeared in the Statesman on the 30th October 1917 and the third letter in the Englishman on the same day. The Respondent alleged that these letters contained defamatory statements which have greatly injured his credit and reputation and have brought him into public odium and contempt. He accordingly prayed for a decree for Rs. 50,000 as damages. The Defendant resisted the claim on the ground that the letters were not defamatory and that the statements contained therein were true in substance and in fact. He further pleaded that they were fair comments made in good faith and without malice upon a matter of public interest on a privileged occasion. On these pleadings, seven issues were framed in the following terms:

"i. Has the Defendant published the alleged "statement of and concerning the Plaintiff?

"Were the alleged libels published of and concerning the Plaintiff?

" ii. Are the words defamatory in their ordinary "and natural meaning?

"iii. Are the words capable of carrying the "innuendo and do they in fact mean what is alleged in "the records?

"iv. Are the words, in so far as they consist of "allegations of fact, true in their ordinary meaning "and in so far as they consist of matters of opinion, are" they fair comment on a matter of public interest?

"v. Were the alleged libels or any of them "published on a privileged occasion?

"vi. If so, were they published maliciously?

"vii. Damages."

2. Mr. Justice Rankin has found on the issues as follows, namely, the first issue in the affirmative ; the second issue in the affirmative, only in part, that is, with regard to a portion of the third letter; the third issue in the affirmative; the fourth issue in the affirmative in part only; the fifth issue in the negative ; the sixth issue in the affirmative in part only. On the seventh issue, damages have been assessed in favour of the Plaintiff for a sum of Rs. 3,500. The Defendant has appealed against this decree on all the material points decided against him. The Plaintiff has also filed a memorandum of cross objections and has urged that all the letters were defamatory, that all the innuendoes have been proved and that the damages awarded are insufficient.

3. The circumstances which led to the publication of the letters by the Defendant lie in a narrow compass and may be briefly recited. On the 10th June 1917, the Government of Bihar and Orissa appointed a Committee known as the Champaran Agrarian Enquiry Committee. The duty of the Committee was (a) to enquire into the relations between landlords and tenants in the Champaran district, including all disputes arising out of the manufacture and cultivation of indigo; (6) to examine the evidence on these subjects already available, supplementing it by such further enquiry, local or otherwise, as they might consider desirable; and (c) to report their conclusions to Government, stating the measures they might, recommend in order to remove any abuse or grievances which they might find. The chief disputes between the planters and their tenants had arisen, not so much in connection with the conditions under which indigo was grown as with the action of certain factories, which had reduced their indigo manufacture and had taken agreements from their tenants for the payment, in lieu of indigo cultivation, of a lump sum in temporarily leased villages, or of an increase of rent in villages under permanent lease. Under the system which appears to have been originally in force, known as the Tinkatia system, each tenant was under an obligation to cultivate indigo, on three cottahs out of every bigha of twenty cottahs, that is, on fifteen per cent, of his lands. The factories released the tenant from this obligation, on payment of a lump sum (called tawan) if the lands were situated in a temporarily leased village and on payment of an enhanced rent (called sara beshi) if the lands lay in a village held under a permanent lease. An agitation was set on foot to challenge the propriety of these agreements, taken by the planters from the cultivators, for compensation or for enhanced rent in return for the abandonment of indigo cultivation.

The Committee was appointed to deal with these problems and the Plaintiff Respondent, Mr. D.J. Reid, who was at the time a member of the Bihar and Orissa Legislative Council, was appointed a member thereof as a representative planter. The Committee also included a representative zemindar and Mr. Gandhi who had actively taken up the cause of the ryots with a view to safeguard their interests. The other members were officials with Sir Frank Sly, Chief Commissioner of the Central Provinces, as President. Amongst the problems which the Committee were thus called upon to investigate, was the question of the levy of the tawan and the sara beshi. There can be no doubt on the evidence that, prior to the 12th August 1917, the Committee had agreed upon the recommendation they would make with regard to tawan. This decision was not final in the sense that the matter could not be reconsidered by them, before they actually submitted the report; but it is plain that at that stage the Committee had decided to recommend that the indigo concerns should be compelled to refund 25 per cent, of the sums they had realised as tawan. This was a relatively simple matter from the point of view of feasibility. The tawan, as we have already explained, had been levied by the factories, only from tenants in villages held by the factories under temporary leases from the Bettiah Raj which was under the management of the Court of Wards. Consequently, if the Government decided to accept the recommendation of the Committee with regard to partial refund of the tawan, they were in a position to put pressure upon the factories concerned, so as practically to compel them to accept the decision; the Court of Wards, on behalf of the Bettiah Raj, would refuse to renew the leases of the villages in question, unless the factories concerned consented to acquiesce in the decision of the Government. The question of sara beshi, on the other hand, stood on a very different footing. The enbanced rent, as we have explained, had been taken from tenants of villages held by the indigo concerns under permanent leases. A decision on the question of sara beshi, in favour of the cultivators, could consequently be carried into effect, only with the concurrence of the planters who would be affected thereby, unless, indeed, the Government was prepared to legislate with retrospective operation or to assist the tenants in numerous expensive and protracted litigations against the factories. In such circumstances the Committee decided, possibly on the advice of the Plaintiff, to attempt a settlement by a conference with the planters concerned Nearly 95 per cent, of the sara beshi collected had been taken by three indigo concerns, namely, Motihari, Pipra and Takolia. Accordingly, on the 11th August 1917, the Defendant, Mr. Irwin, Manager of Motihari, Mr. Norman, Manager of Pipra and Mr. Hill, Manager of Takolia, were summoned by telegram to Bettiah to discuss the situation with the Committee. Sir Frank Sly, it is clear on the evidence, authorised Mr. Reid, the Plaintiff, to inform the planters, in confidence, of the decision which the Committee had already taken in respect of tawan. On the 12th August 1917, the three planters who bad been summoned to attend had a conference with Mr. Reid. The substantial question of fact in controversy in this litigation relates to what actually took place at this conference. Mr. Norman came in first and was followed soon after by Mr. Irwin and

Mr. Hill. There is further no doubt that Mr. Rainey, Deputy Secretary to the Government of India in the Finance Department, who was also a member of the Committee, came in at a later stage and joined in the discussion. The case for the Plaintiff is that, as instructed by the President, he told the Defendant that the Committee had decided to recommend that 25 per cent of the tawan should be refunded. The Defendant denies that the Plaintiff gave him this information. Mr. Norman, Mr. Hill, Mr. Reid, Mr. Irwin and Mr. Rainey have all been examined upon this point. Mr. Justice Rankin has come to the conclusion that the Plaintiff did inform the Defendant, on the morning of the 12th August, of the actual decision by the Committee to recommend a refund of 25 per cent, of the tawan by the planters to the ryots. The decision of the question in dispute depends primarily upon appreciation of oral testimony which has to be taken along with the surrounding circumstances and the conduct of the parties concerned at the time of the conference and subsequently. This, in any event, is by no means an easy task for a Court of Appeal; in the present case the difficulty is enhanced by the fact that it would be idle to expect the witnesses to reproduce the exact words which were used at the interview by the various persons present; no one then anticipated trouble and no notes were kept of the conversations which actually took place. We have thus, besides conflict of testimony, an embarrassing element of uncertainty. We have, consequently, scrutinised the evidence with great care.

4. We see no escape from the conclusion that the Plaintiff did intimate to the Defendant the recommendation which the Committee had decided to make with regard to the refund of 25 per cent, of the tawan. We have the cardinal fact that the Plaintiff was authorised by the President to make this communication. Such permission was given for the obvious reason, that if information on this point was withheld, the planters who had been summoned to enter into negotiations could not be expected to decide what concession they should or should not make with regard to sara beshi. Both the questions were known to be under consideration; a decision upon either or both in favour of the cultivators would seriously affect the financial position of the planters concerned. To withhold from the planters all information as to tawan would really operate to defeat the object of the conference, while to give them incorrect information would plainly be nothing short of an act of bad faith. In such circumstances, it is improbable in the extreme that any discussion could have taken place on the question of sara beshi without reference to the question of tawan and the evidence leaves no room for doubt that the subject of tawan did come up for consideration at the conference. We have, then, the evidence of Mr. Norman and Mr. Hill. Mr. Norman is definite and clear that he himself was told of the proposed refund of tawan by Mr. Reid at the very commencement of the discussion. This statement might not be conclusive, as Mr. Norman came in first and Mr. Irwin and Mr. Hill followed him a little later. Mr. Norman, however, asserts that when Mr. Irwin came in, Mr. Reid repeated the information about the tawan. In this, he is corroborated by Mr. Hill. We see no sufficient reason to reject this part of the

testimony of Mr. Norman and Mr. Hill. Their statement on oath is not really contradicted by their subsequent conduct. Great stress has been laid on a letter written by Mr. Norman to the Government of Bihar and Orissa on the 27th October 1917. In our opinion, there is nothing in the contents of that letter which contradicts or renders improbable the statement of Mr. Norman made in Court. The letter is perhaps cautiously phrased, but it is quite consistent with the case now made by Mr. Norman, namely, that Mr. Reid told Mr. Irwin, in his presence and in the presence of Mr. Hill, the decision of the Committee to make a recommendation for refund of the tawan. This inference follows also from the letter of Mr. Norman to the Defendant on the 6th November. As regards the evidence of Mr. Hill, his conduct at the meeting of the Bihar Planters'' Association on the 16th October, has formed the subject of severe comment. At that meeting, Mr. Irwin read out the first of the three letters in question. The statements contained in that letter are inconsistent with the hypothesis that on the 12th August Mr. Irwin had been apprised of the decision of the Committee to recommend a partial refund of the tawan. Mr. Hill, who was present at the meeting, did not challenge the accuracy of the statements contained in the letter. This, no doubt, is a matter for legitimate comment; but we are not prepared to reject as impossible the explanation that Mr. Hill may not have taken in the true bearing of every statement in a long argumentative letter. At any rate, his omission at the meeting to take exception to the accuracy of all the statements in the letter does not neutralise the effect of his sworn testimony. On the whole, we are of opinion that the evidence of Mr. Norman and Mr. Hill is reliable and supports the allegation of the Plaintiff that he did carry out the instructions of Sir Frank Sly and did communicate to the planters concerned that the Committee had decided, whether finally or only provisionally is not material for our present purpose, to recommend a partial refund of the tawan. This conclusion is supported to a large extent by the evidence of Mr. Rainey. Mr. Rainey had not been authorised to make a communication to the planters, but he had a long discussion with Mr. Irwin on the subject of the tawan. Mr. Rainey gives the substance of this conversation to the best of his recollection and it does certainly create the impression that Mr. Irwin had previously been apprised of the intentions of the Committee on the question of tawan Mr. Rainey himself did not give any definite information to Mr. Irwin ; he merely stated that whatever action might be recommended by the Committee, it would not be of a vindictive nature and suggested to Mr. Irwin that he should obtain information from the President. It is remarkable that though Mr. Irwin had ample opportunity to put the question to Sir Frank Sly, he never did so. We are not prepared to accept the explanation that Mr. Irwin did not make an enquiry of the President, because he was assured that tawan would be left untouched. Such assurance had not been given either by Mr. Reid or by Mr. Rainey and it is improbable in the highest degree that either of them could have stated what had not the remotest foundation in fact. We are thus left with the hypothesis that Mr. Irwin had received from Mr. Reid whatever information was available at that stage. The view we are inclined to take on this part of the case is supported to some extent

by the answers which were given by Mr. Irwin himself to questions put by the Court after his cross-examination had been concluded. His evidence shows that there was no omission to refer to the question of tawan in his presence. If it is held, as we think it must be held, that the question of tawan did as a matter of fact form the subject of discussion, there are really only two alternatives ; either Mr. Reid communicated to Mr. Irwin the decision of the Committee or designedly left him in a state of doubt and uncertainty. If the former alternative is accepted, the Plaintiff carried out the instructions of the President; if the latter alternative is accepted, it is a matter for surprise that the Defendant did not make an enquiry of the President and obtain exact information upon a matter of such vital importance to him. We may add that in our opinion, there is no room for a third alternative, viz., that Mr. Reid had assured Mr. Irwin that the tan an would not be touched ; there is no conceivable reason why Mr. Reid should tell.Mr. Irwin the reverse of the truth, specially as he had communicated the decision of the Committee to both Mr. Norman and Mr. Hill. Our conclusion, then, is that Mr. Reid did intimate to Mr. Irwin on the 12th August 1917, the decision of the Committee as to partial refund of the tawan and it was with knowledge that the tawan would be affected that the planters agreed to a refund of the sara beshi. This view is supported by subsequent events. We need refer only to the letter of the 19th August 1917, from Mr. Norman to Mr. Hill and Mr. Irwin. This letter must have made it abundantly plain to the Defendant that the basis of the negotiations was that the planters should not make their agreement as to sara beshi on the assumption that tawan would not be touched. We have further the letter from the Defendant to the Plaintiff on the 15th September and the reply thereto from the Plaintiff to the Defendant on the 18th September; these are hardly consistent with the hypothesis that Mr. Irwin had been led to understand that tawan would not be touched. Thereafter, on the 29th September, Mr. Norman, Mr. Hill and Mr. Irwin met at Ranchi and after conference with the Plaintiff and the President, they gave their assent to an agreement, substantially on the lines of the provisional arrangement made on the 12th August at Bettiah, subject to the modification that in the cases of Mr. Irwin and Mr. Hill the amount of sara beshi to be refunded was to be 26 per cent, instead of 9.5 per cent. There can, we think, be no real doubt that before this final agreement as to sara beshi was reached, the three planters had been informed that the refund of sara beshi was to be recommended in addition to the refund of the tawan; the one was by mutual agreement, the other was by decision of the Committee acquiesced in by the planters concerned.

5. In the view we take, we need not discuss in detail the conduct of the parties between the 29th September when the final agreement as to sara beshi was reached and the 7th October when the first of the three disputed letters was written. But we cannot overlook the letter written by the Defendant to Messrs. Begg, Dunlop and Co., the Calcutta Agents for the Motihari concern. This letter discloses an attempt to nullify the concession to which Mr. Irwin had consented. We agree

with Mr. Justice Rankin that this letter can be interpreted only as an attempt by a man (who had made his bargain but very rapidly repented), to seek a way to go back upon it. This foreshadows what followed, namely, the three letters to the Press in which the Defendant, not merely condemned the action of the Committee, but attacked the Plaintiff as a person who had by dishonest and underhand means and by the most flagrant false pretences secured the consent of the planters to a refund of the sara beshi after creating the impression in their minds that there would be no refund of the tawan. There can, we think, be no room for doubt that this is a baseless charge against the Plaintiff. At the same time, we are not prepared to hold that the Defendant designedly brought forward this false accusation against the Plaintiff. No satisfactory or sufficient reason has been assigned why he should have wilfully made such a grave charge against a gentleman with whom, he had been on friendly terms; and it is not improbable that notwithstanding what was intimated to the Defendant by the Plaintiff, the Defendant hoped or believed that the taw an might ultimately not be touched. There is evidence on the record as to the temperament of the Defendant and there is some force in the contention that if he had understood at any time between the 12th August and 29th September that the tawan would have to be partially refunded, he would not have refrained from forthwith entering the most emphatic protest, as we find he did afterwards. But this much, is plain that if there was any misapprehension on the part of the Defendant as to the real state of things, it cannot in any sense be attributed to the act or omission of the Plaintiff. On the evidence we must hold that the Plaintiff carried out the instructions of the President in a perfectly straightforward manner and made a frank disclosure to the planters of the intentions of the Committee: and further, that there is no foundation for a charge of unfair dealing against him. We have next to consider whether, on the facts found, the claim for damages can be sustained.

6. There has been considerable discussion at the Bar as to the meaning and purport of the three letters in question, the language whereof has been subjected to minute criticism. On behalf of the Defendant Appellant, it has been contended that if the first two letters are not defamatory, the third also falls within the same category. On behalf of the Plaintiff Respondent, it has been argued, on the other hand, that if the third letter is defamatory, the first and second should be included in the same class. We have read the letters and have come to the conclusion that they should be considered, not separately, but as an inter-connected series. From this point of view, there can be no doubt that the letters do impute to the Plaintiff dishonest and dishonorable conduct and are intended to convey the impression that he did not scruple to employ deliberate trickery and deception or to have recourse to false pretences to gain his own objects. There can be no doubt that the imputation was made against the Plaintiff, though it is possible so to construe the letters as to entitle us to hold that the imputation was levelled against the Committee as a whole. That, however, makes no real difference in the liability of the Defendant, for if the statement is defamatory of all the members, each is entitled to sue. Reference

may, in this connection, be made to the decision in Booth v. Briscoe (1877) 2 Q.B.D. 496, where eight persons, who were trustees of certain charities, brought an action for a libel commenting on the management of the charities by the trustees; it was ruled that the persons in question were rightly joined as Plaintiffs: Carter v. Rigby (1896) 2 Q.B. 113. Each of such persons can obviously sue for the libel on himself ; though different considerations would arise if one of such persons brought a suit on behalf of himself and the others. From this point of view, it is needless to consider whether the defamatory statements were directed against the Plaintiff specially or were levelled against all the members of the Committee equally. We may add that it has not been and cannot be disputed that the imputation was defamatory in the sense that it was calculated to expose the person "concerned to hatred, ridicule or contempt, or to "cause him to be shunned or avoided, or had a tendency to injure him in his office, profession or trade ".

7. Before we proceed to deal with the question of fair comment, we may here refer parenthetically to a matter of procedure which was raised in the Court below. An attempt was made at the trial to compel production of the minutes of the Committee. This was unsuccessful, as the Government of Bihar and Orissa decided that the minutes were "unpublished "official records relating to affairs of State" within the meaning of Section 123 of the Indian Evidence Act. It has been contended before us that the papers mentioned did not fall within this description; but it is fairly clear from the language of the section that the Court cannot be invited to discuss the nature of the document. The public officer concerned and not the Judge, is to decide whether the evidence referred to shall be given or withheld. If any other view were taken, the mischief intended to be averted would take place, as the Judge could not determine the question without ascertaining the contents of the document and such enquiry, if it did take place, must, for obvious reasons, take place in public: Beatson v. Skene (1860) 5 H. and N. 838, 853, Hennesy v. Wright (1888) 21 Q.B.D. 509, Jehangir v. Secretary of Slate (1903) 6 Bom. L.R. 131, 160. The result practically is, that if the objection is raised by the proper authority, the Court cannot compel disclosure either by primary or by secondary evidence. This holds good even though there is reason to suspect that the witness concerned may have had access to the official records withheld and may have refreshed his memory therefrom before he came to give evidence.

8. On behalf of the Defendant it has been, argued, that the disputed letters constituted fair comment on a matter of public interest and could not consequently be deemed defamatory. This does not raise a question of privilege, because nothing is a libel which is a fair comment on a subject fairly open to public discussion. As was pointed out by Bowen L.J. in Merivale v. Carson (1887) 20 Q.B.D. 275, this is a rule of common right of public criticism equally enjoyed by every subject of the realm, not a question of allowance to persons in any particular situation. A Defendant setting up privilege asserts that he is protected by standing in a special relation to the facts of the case; but when his defence is fair comment, he asserts that he has done only

what everyone has a right to do [see the observations of Blackburn J. in Campbell v. Spotiswoode (1863) 3 B. and S. 769 and of Collins M.R. in McQuire v. Western Morning News Co. (1903) 2 K.B. 100, III; see also R. v. Gray (1900) 2 Q.B. 36, 40, Peter Walker v. Hodgson (1909) 1 K.B. 239, 253, Dakhyl v. Labouchere (1908) 2 K.B. 325, Thomas v. Bradbury (1906) 2 K.B. 627, Arnold v. R. (1914) 30 T.L.R. 462 : (1914) A.C. 644, Neville v. Dominion, of Canada News Co. (1915) 3 K.B. 556, 566]. We must not overlook however, that when the Defendant invokes the aid of the doctrine that no action lies, if he can prove that the words complained of are a fair comment on a matter of public interest, the defence is applicable only to expressions of opinion distinct from assertions of fact. This principle is lucidly stated in the following passage from the judgment of Palles C.B. in Lefroy v. Burnside (1879) L.R. 4 Ir. 556, 565.

9. "That a fair and bond fide comment on a matter of" public interest is an excuse of what would otherwise "be a defamatory publication is admitted. The very "statement, however, of this rule assumes the matters "of fact commented upon to be somehow or other "ascertained. It does not mean that a man may "invent facts and comment on the facts so invented, "in what would be a fair and bond fide manner on the "supposition that the facts were true. Setting apart "all questions which would be raised at a trial by "such a defence must necessarily be,--first, the existence of a certain state of facts; secondly, whether "the publication sought to be excused is a fair and "bond fide comment upon such existing facts. If the "facts as a comment upon which the publication is "sought to be excused do not exist, the foundation "of the plea fails."

10. To the same effect are the observations of Kennedy "J., in Joynt v. Cycle Trade Publishing Co. (1904) 2 K.B. 292, 294: "the "comment must not misstate facts, because a comment "cannot be fair which is built upon facts which are "not truly stated. "See also the observations of Vaughan Williams L.J., in Joynt v. Cycle Trade Publishing Co. (1904) 2 K.B. 292, 294, of Cozens Hardy, M. R. in Hunt v. Star Newspaper Co. (1908) 2 K.B. 309, 317 and of Maclean C.J. in Barrow v. Hemchandra ILR (1908) Calc. 495, 506. The substance of the matter is that, though, as pointed out in Merivale v. Carson (1887) 20 Q.B.D. 275, 280, the limits of the fair comment rule are very wide, before the defence can at all become available, the Court must be satisfied that the words complained of are comments and not statements of fact. We are not unmindful that Mr. Justice Philli-more has pointed out in Mangena v. Wright (1909) 2 K.B. 958, 976, that there may, perhaps, be one class of comment which may be entitled to protection as fair comment, even though it is in one sense founded on untrue statements:

Then comes the question of comment. Is it fair "comment? The Plaintiff says it cannot be fair comment" because it is founded on untrue statements. "No doubt, when there is one published document in" which the writer partly alleges and partly comments "and of which the sum total is defamatory, the "document cannot be

justified unless the facts are "true and the comment fair; because if the facts do "not warrant defamatory comment, the comment is "not fair and if the facts as alleged warrant defamatory" comment, they are defamatory and must be "proved to be true. But when one person alleges and "another comments, this reason does not apply. I "think this view, if true in other cases, is specially" true when the allegation, as distinct from the comment is made in a privileged document. If, by some "unfortunate error, a vote in Parliament recites, or a "Judge in giving the reasons of his judgment states, "that which is derogatory to some person and the "charge is mistaken and ill founded and a newspaper" reports such vote or judgment and proceeds "in another part of its issue to comment upon the "character of the person affected in terms which "would be fair if the charge were well-founded, the "newspaper which so reports and comments should "be entitled to the protection of fair comment.

11. But the special case contemplated by Phillimore J. does not arise here and the defence of fair comment can be of no avail to the Appellant, unless he can prove that his comments were based upon actual facts. This, as we have already held on the evidence, he has failed to establish. His case thus falls exactly, within the rule enunciated by Lord Herschell in delivering the opinion of the Judicial Committee in Daris v. Shepstone (1886) 11 A.C. 187, 190:

There is no doubt that the public acts of a "public man may lawfully be made the subject of fair "comment or criticism, not only by the Press, bat. "by all members of the public. But the distinction "cannot be too clearly borne in mind between comment or criticism and allegations of fact, such as "that disgraceful acts have been committed, or discreditable language used. It is one thing to comment "upon or criticise, even with severity, the acknowledged or proved acts of a public man and quite "another to assert that he has been guilty of particular acts of misconduct. In the present case, the " Appellants, in the passages which were complained "of as libellous, charged the Respondent, as now "appears without foundation, with having been guilty "of specific acts of misconduct and then proceeded on "the assumption that the charges were true, to comment upon his proceedings in language in the "highest degree offensive and injurious; not only so, "but they themselves vouched for the statements by "asserting that though some doubt had been thrown "upon the truth of the story, the closest investigation would prove it to be correct. There is no "warrant for the doctrine that defamatory matter thus "published is regarded by the law as the subject of "any privilege.

12. We are accordingly of opinion that Mr. Justice Rankin has rightly overruled the plea of fair comment.

13. We have next to consider the question of privilege. The Defendant has not claimed absolute privilege and has not contended that no action lies, however untrue and malicious the statements may have been. The defence has been limited to a claim of a qualified privilege. No indication was furnished in the written

statement as to the precise grounds for such privilege; but in the course of the arguments addressed to us, an endeavour has been made to support the plea on the assumption that the matter was of public interest and thus attracted the operation of the rule that every statement made in discharge of a legal, moral or social duty is privileged; this, as Blackburn J. put it in Davis v. Snead (1870) L.R. 5 Q.B. 608, 611, is equivalent to the principle that where the person is so situated that it becomes right in the interests of society that he should tell to a third person certain facts, then, if he, bona fide and without malice, does tell them, it is a privileged communication. The limits of this rule have never been accurately prescribed ; on the other hand, as pointed out by Buckley L. J. in Adam v. Ward (1915) 31 T.L.R. 299, 304, the rule has been sometimes stated too broadly; for instance, in the dictum of Lord Tenterden in Cox v. Feeny (1863) 4 F. and F. 13, 18, that "a man has a right to publish, for the purpose of giving the public information, that which is proper for "the public to know." The enunciation of the rule by Buckley L.J. himself is, perhaps, characterised by as much precision as is attainable in a matter of this description:

If the matter published is matter of public interest and the party who publishes it owes a duty "to communicate it to the public, the publication is "privileged, and in this sense, duty means, not a duty "as a matter of law but a duty recognised by English "people of ordinary intelligence and moral principle, "but at the same time not a duty enforceable by legal "proceedings, whether civil or criminal.

14. This statement was substantially adopted by the House of Lords in Adam v. Ward (1917) A.C. 309, 322, 344, where Lord Dunedin and Lord Shaw intimated their concurrence with the reasons given by Lord Wrenbury (then Buckley L.J.) as they were entirely satisfactory. Lord Loreburn and Lord Dunedin also relied upon the criterion tersely stated by Baron Parke in Toogood v. Spyring (1834) 1 C.M. and R. 181, 193: communications "fairly made by a person "in the discharge of some public or private duty, "whether legal or moral, or in the conduct of his own "affairs, in matters where his interest is concerned, "and "if fairly warranted by any reasonable occasion "or exigency and honestly made, such communications are protected for the common convenience and "welfare of society; and the law has not restricted "the right to make them within any narrow limits." Lord Buckmaster adopted this statement in London Association v. Greenlands (1916) 2 A.C. 15, 22 and added the important observation: "The circumstances that constitute "a privileged occasion can never be catalogued and "rendered exact. New arrangements of business, "even new habits of life, may create unexpected combinations of circumstances, which, though they "differ from well-known instances of privileged "occasion, may none the less fall well within the "plain, yet flexible language of the definition."

15. Tested in the light of the rule thus explained, the defence of privilege must fail in the case before us. The number of concerns affected by the report of the Champaran Agrarian Enquiry Committee as to sarabeshi or tawan, was two or three in the one case and fifteen to twenty in the other. The Defendant might

appropriately take steps, as he did, to move the Planters'' Association, the European Association and his own, company; but we can see no justification for publication to the world at large. If the comments had been based on an accurate statement of the facts, he would no doubt have been protected; but, in that case, recourse to the defence of privilege would not have been necessary. The Defendant has thus failed to bring himself within the rule that if the occasion is privileged, the burden lies on the Plaintiff to prove malice in fact: Clark v. Molyneux (1877) 3 Q.B.D. 237, Jenoure v. Delmege (1891) A.C. 73. We are further of opinion that even if the statement could be treated as made in discharge of a public duty, the privilege was lost, because the statement was made maliciously. It is sufficient in this connection to refer to the exposition, given by Lord Esher, of the meaning of the term "malice," in the case of Royal Aquarium Society v. Parkinson (1892) 1 Q.B. 431, 443, 454.

16. "The question is, whether the Defendant is using "the occasion honestly or abusing it. If a person "on such an occasion states what he knows to be "untrue, no one ever doubted that he would be "abusing the occasion. But there is a state of mind, "short of deliberate falsehood, by reason of which a "person may properly be held by a jury to have "abused the occasion and in that sense to have spoken "maliciously. If a person from anger or some other "wrong motive has allowed his mind to get into such "a state as to make him cast aspersions on other "people, reckless whether they are true or false, it "has been held and I think rightly held, that a jury "is justified in finding that he has abused the occasion. Therefore, the question seems to me to be "whether there is evidence of such a state of mind "on the part of the Defendant. It has been said that "anger would be such a state of mind; but I think "that gross and unreasoning prejudice, not only "with regard to particular people, but, with regard "to the subject-matter in question, would have the "same effect. If a person, charged with the duty "of dealing with other people''s rights and interests "has allowed his mind to fall into such a state of "unreasoning prejudice in regard to the subject-" matter, that he was reckless whether what he stated "was true or false, there would be evidence upon "which a jury might say that he abused the occasion "

17. To the same effect is the statement of Lopes L.J. in the case just mentioned:

Not only must the occasion create the privilege, "but the occasion must be made use of bond fide and "without malice. The Defendant is only entitled "to the protection of the privilege, if he uses the "occasion in accordance with the purpose for which "the occasion arose. He is not entitled to the protection of the privilege if he uses the occasion for "some indirect or wrong motive. This cast upon the " Plaintiffs the burden of proving express malice or "malice in fact. If it be proved that, out of anger "or for some other wrong motive, the Defendant has "stated as true that which he does not know to be "true and he has stated it, not stopping or taking the "trouble to ascertain whether it is true or not,--stated "it recklessly by reason of his anger or other indirect "motive--the jury may infer that he used the "occasion

not for the reason which justifies it, but "for the gratification of his anger or other indirect "motive."

18. In the case before us, we have already held that there was a needlessly extensive publication of the allegations made by the Defendant Gilpin v. Fowler (1854) 9 Exch. 615, the language used was also needlessly violent Wright v. Woodgate (1835) 2 C.M. and R. 573, Oddy v. Paulet (1865) 4 F. and F. 1009, Spill v. Maule (1869) L.R. 4 Ex. 232, 235, Edmondson v. Birch and Co. (1907) 1 K.B. 371, 381, Nevill v. Fine Art Co. (1895) 2 Q.B. 156, 170 : (1897) A.C. 68, Laughton v. Bishop of Sodor (1872) L.R. 4 P.C. 495, Adam v. Ward (1917) A.C. 309, 330, the statements themselves were contrary to the facts and the Defendant has persisted in his allegations, even after he has been assured by Mr. Norman and Mr. Hill that the charge he had brought forward against the Plaintiff was unfounded: Warwick v. Foulkes (1844) 12 M. and W. 507, 508, Simpson v. Robinson (1848) 12 Q.B. 511. Some of these circumstances taken individually might not have been conclusive; but estimating their cumulative effect, we are not prepared to dissent from the view that the statements were made maliciously in the sense explained above and that the plea of privilege cannot be sustained.

19. As regards the eross-objecsions, we are of opinion that they are unsubstantial. As we have already explained, there is really a single defamatory statement and the Plaintiff could not and did not claim separate damages in respect of each letter. As regards the amount of damages, we see no reason to alter the award at the instance of either party.

20. The result is, that the decree is affirmed and the appeal and cross-objections are both dismissed with costs.

Chaudhuri J.

21. I agree and have nothing to add.