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*Judgment: approved by the Court for handing down (subject to editorial corrections)**		*Delivered:*	**24/06/2015**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

_____

MARTIN STOKES Plaintiff

and

SUNDAY NEWSPAPERS LIMITED Defendant

_____

STEPHENS J

Introduction

[1] The plaintiff, Martin Stokes, brings this action for libel against Sunday Newspapers Limited in relation to an article published in the Sunday World on 2 December 2012 headed in capitals across pages 20 and 21 "FURY GETS STOKED UP." The plaintiff alleges that the article contains the defamatory meanings that the plaintiff wishes to kill or wishes to have killed his cousin John Stokes or that he will act or conspire with others to have John Stokes killed. The plaintiff also alleges that the article contains the defamatory meaning that the plaintiff threatened to kill Julia Mongan to prevent her from giving evidence at his criminal trial for the murder of her husband or that he conspired with others to threaten to kill Julia Mongan to prevent her from giving evidence. The defendant denies that the article identifies the plaintiff as the person who allegedly threatened or who conspired with others to threaten Julia Mongan. The defendant also denies that the article identifies the plaintiff as the person who wished to kill or wished to have killed, John Stokes, or who would act or conspire with others to have John Stokes killed. The defendant, whilst accepting that the article is capable of bearing the meanings alleged by the plaintiff, contends that if the plaintiff was identified that the article bore lesser defamatory meanings and pleads justification in relation to those lesser meanings. The defendant also relies on the public interest defence as defined in *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127.

[2] The matters presently for my determination are:

(a) An application by the plaintiff pursuant to Order 82, Rule 3A of the Rules of the Court of Judicature (Northern Ireland) 1980 for an order that the words complained of in the article are not capable of bearing the lesser meanings attributed to them by the defendant. If that application was successful then the defendant's plea of justification

would be struck out under Order 18, Rule 19.

(b) An application by the plaintiff pursuant to Order 18, Rule 19 to strike out the defendant's *Reynolds* defence.

(c) An application by the plaintiff pursuant to Section 62(2) of the Judicature (Northern Ireland) Act 1978 and Order 33 Rule 4(4) that the action should be tried without a jury.

[3] Mr Michael Lavery QC and Mr McCann appear on behalf of the plaintiff. Mr Humphreys QC and Mr Fahy appear on behalf of the defendant.

Factual Background

[4] At around 2 a.m. on Thursday 7 February 2008 at 21 Fallswater Street, Belfast, John Mongan, whilst in bed with his wife, Julia Mongan, was subjected to a brutal attack in which he sustained multiple incised and stab wounds some of which were caused by a bladed weapon such as a knife, whilst others were consistent with having been caused by a machete or similar implement and could have been caused by a hatchet or axe with a sharp cutting edge. He died from his wounds.

[5] Christopher Patrick Stokes, Edwards Gabriel Stokes and the plaintiff, Martin Stokes, were all prosecuted for and convicted of the murder of John Mongan. On 5 March 2010 Treacy J having sentenced each of them to life imprisonment, imposed the minimum terms that each would be required to serve. All of them appealed against their convictions and on 16 September 2011 the appeals of Christopher Stokes and Edward Stokes were dismissed, whilst the Court of Appeal allowed the appeal in relation to the plaintiff, Martin Stokes, and ordered a re-trial.

[6] The re-trial of the plaintiff before Maguire J with a jury concluded on Friday 30 November 2012 with a unanimous jury verdict that the plaintiff was not guilty.

[7] Christopher Stokes and Edward Stokes who have been convicted of the murder, the plaintiff, Martin Stokes who was acquitted together with Julia Mongan and John Stokes are all members of or related to members of the travelling community, as was John Mongan. John Stokes is a cousin of the plaintiff, Martin Stokes.

[8] Two days after the plaintiff's acquittal and on Sunday 2 December 2012 the article was published under the headline "FURY GETS STOKED UP" and with a banner, again in capitals across both pages but in smaller font than the headline "EXCLUSIVE - SHOCK AT RE-TRIAL AS VICTIM'S WIFE'S EVIDENCE IS REJECTED."

[9] The article was accompanied by a number of photographs. The largest was of the plaintiff with his arms aloft celebrating as he left court. The other photographs were of:

(a) Julia Mongan with the caption "Traumatised: John Mongan's widow, Julia, who gave evidence in court."

(b) John Mongan with the caption "Her husband John who was hacked to death in 2008".

(c) Christopher Stokes described as Martin Stokes' uncle "who was jailed in 2009 and later took his own life."

[10] Under the banner and headline, in larger text than the main part of the article and in bold, the following words were printed:

> "**Teen cleared of savage machete murder but families now fear that bitter traveller feud will spiral out of control**."

The article itself then starts with the paragraph:

> "THE family of murdered traveller John Mongan were devastated last night as they struggled to come to terms with the shock outcome in the Martin Stokes retrial."

[11] The words about which the plaintiff complains are:

> "John Mongan's family could only look on in disbelief as he left Belfast Crown Court a free man.
>
> For the *Sunday World* can reveal that not only did widow Julia Mongan give evidence against Martin Stokes but his own cousin John also pinpointed him for the murder.
>
> *The repercussions for this are unknown, however a reprisal attack is feared as John Stokes has now been labelled as a tout by his own Derry-based family.*
>
> "John Stokes took his life in his hands when he decided to give evidence against Martin.
>
> **Flesh**
>
> He went up against his own flesh and blood and that won't be forgotten, he is a marked man" said one traveller source."

The passage which is emphasised by italics is also emphasised by italics in the text of the article. The word "Flesh" is also in bold and in larger print than the rest of the article.

[12] The plaintiff also complains about the following words:

> "Julia's evidence that she heard Martin's voice on the night of the horrific murder was rejected, the jury

> accepted Martin's claim that he was sleeping at his sister's home at the time.
>
> This came as a massive blow to Julia who had bravely gave (sic) evidence in court despite having her life threatened."

[13] The article also contained a paragraph emphasised in italics *"And as tensions spilt out of the court room Martin Stokes had to be taken from the building under police guard for his own protection."* I set out the full text of the article in a schedule to this judgment.

[14] On 8 January 2013 the plaintiff issued proceedings (2013 No: 2577). The Statement of Claim was served on 13 June 2013. A defence was served on 14 November 2013 but neither party has included that pleading in the bundle available to the court. An undated document entitled "Amended Defence" with an incorrect record number was served under cover of a letter dated 23 September 2014. The Amended Defence was followed by an undated reply without any record number served by the plaintiff under cover of a letter dated 3 March 2015. There was then a further Amended Defence served by the defendant on 20 April 2015. The applications presently before me were heard on Thursday 18 June 2015. It was apparent during the hearing that further extensive amendments are required to be made to the defence. For instance the various public interests in relation to the *Reynolds* defence have not been sufficiently defined and the circumstances of responsible journalism has not been sufficiently addressed.

[15] On 31 March 2015 the plaintiff set the action down for hearing requesting trial without a jury. By notice dated 7 April 2015 the defendant requested trial with a jury. The plaintiff issued a summons on 15 April 2015 for an order that the action be tried without a jury.

Meanings

[16] The defendant accepts that the words complained of in the article are capable of bearing the meanings alleged by the plaintiff.

[17] The defendant asserts that the words complained of are capable of bearing the lesser meanings that:

(i) there were grounds to suspect that further violence may ensue following the conclusion of all the criminal proceedings in respect of the murder of John Mongan and that the plaintiff may be one of the persons involved in that violence.

(ii) there were grounds to suspect that the personal safety of John Stokes and Julia Mongan might be under threat as a result of their giving evidence at the original trial and at the retrial of Martin Stokes and that the plaintiff may be one of the persons involved in threatening their personal safety.

[18] There are a number of features of the lesser meanings which the defendant

contends that the words are capable of bearing:

(a) The plaintiff submits that the words are only sensibly capable of meaning that someone is going *to kill* John Stokes. The defendants submit that the words are capable of meaning that *further violence* may ensue or that the *personal safety* of John Stokes might be under threat. In short the defendant contends that the words are capable of bearing a meaning that the violence will be of a lesser degree than that which would cause death.

(b) The plaintiff submits that the words are only sensibly capable of meaning that the person who is going to take action *is the plaintiff and that he will definitely be involved*. The defendant submits that the words are capable of meaning that the plaintiff *may be, but is not necessarily one of the persons* involved in taking action. So it is contended that the words are capable of bearing a lesser meaning than that the plaintiff is the person who will commit the act. The lesser meaning is that he is in a group of persons who might do so, though other persons within the group could do so without any involvement on the part of the plaintiff.

(c) The plaintiff submits that the words are only sensibly capable of meaning that *action will be taken*. The defendant submits that the words are capable of meaning that action *may ensue*.

(d) The plaintiff submits that the words are only sensibly capable of meaning that *because John Stokes gave evidence against Martin Stokes* that action will be taken. The defendant submits that the words are capable of bearing the meaning that there are a number of grounds to suspect that action may be taken.

[19] At this stage the role of this court is to delimit the range of meanings of which the words are reasonably capable of bearing and to rule out meanings outside that range. The role of the tribunal of fact is to decide what meaning, within that permissible range, the words actually bear. If the tribunal of fact at trial is judge alone then an application for the trial of a preliminary issue as to the meaning or as to the imputation conveyed by the statement complained of, could well be appropriate. In arriving at a decision as to whether the words are capable of bearing the lesser meanings for which the defendant contends I seek to apply the principle set out in *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130, *Neeson & another v Belfast Telegraph Newspapers Limited* [1999] NIJB 200 and *Skuse v Granada Television Ltd* [1996] EMLR 278.

[20] I consider that the ordinary reasonable reader when considering the paragraph of the article which is emphasised in italics would consider it capable of bearing the lesser meanings contended for by the defendant. In that paragraph it is asserted that the repercussions for this are *unknown*. "This" refers back to both Julia Mongan and Martin Stokes giving evidence for the prosecution. The repercussions for them giving evidence are unknown but a reprisal attack is feared rather than that it would take place. The repercussions would emanate from the Stokes family rather than necessarily involving the plaintiff though he could be involved.

[21] The lesser meanings are also contained in the passage in bold letters and larger font at the start of the article as follows:

> "**Teen cleared of savage machete murder but families now fear bitter traveller feud will spiral out of control**."

That is a reference to a fear of events taking place not an assertion that they will take place. The feud is between families. The fear is a fear on the part of both families rather than a fear on the part of solely the family of John Mongan. So in relation to that passage the reasonable reader would consider that there were fears both ways involving both families and not necessarily limited to fears on behalf of the John Mongan family. This meaning gains further support from that part of the article that such were the tensions spilling out of the court room that the plaintiff had to be taken from the building under police guard for his own protection so the tensions involved many members of both families.

[22] The passage emphasised in italics and the passage in bold letters and larger font at the start of the article do not expressly identify the plaintiff. The feud between the families leads to fears in both families. By way of contrast the reprisal attack which is feared can only sensibly emanate from the Stokes family, two other members of which were convicted of the murder and one of the two who has since died. The words so far are capable of bearing the meaning that the reprisal attack which is feared could be carried out by any member of the Stokes family including the plaintiff but not necessarily involving the plaintiff.

[23] The strength of the plaintiff's submissions relates to the paragraph which comes immediately after the passage emphasised in italics which is in the following terms:

> "John Stokes took his life in his hands when he decided to give evidence against Martin.
>
> **Flesh**
>
> He went up against his own flesh and blood and that won't be forgotten, he is a marked man" said one traveller source."

[24] This passage is also emphasised by the word "Flesh" in larger print in bold between the two sentences. The expression took his life in his hands most obviously means that he was putting his life at risk when he decided to give evidence and that the risk to his life was from the Stokes family, his own flesh and blood. It is stated that his actions will not be forgotten and accordingly the most obvious meaning is that the risk to his life will not go away. He is a marked man in a sense greater than someone who is to be watched with suspicion but rather that he is marked for a consequence which involves his life. I consider that this passage also is capable of bearing the meaning that the consequence could be carried out by any member of the Stokes family including the plaintiff but not necessarily involving the plaintiff.

[25] The question is whether the range of possible meanings of the article as opposed to the actual meaning has been shifted by that passage so that the later

provisions rule out and prevail over the lesser meanings contended for by the defendant.

[26] The article must be read as a whole and any bane and antidote taken together. I consider that different meanings can be taken from different parts of the article but the range of permissible meanings is to be taken on the basis that the reasonable reader has read the article as a whole with the ability to consider whether some of the later words are literal or metaphorical or whether taken in the round they affect the overall meaning. The heading of the article that "families now fear that bitter traveller feud will spiral out of control" taken with the emphasis added by italics to the passage that repercussions for this are unknown, however a reprisal attack is feared, leads to the conclusion that a reasonable reader could conclude that the article as a whole is capable of bearing the lesser meanings despite the later passage. In arriving at that conclusion I have borne in mind the high threshold for exclusion of meanings (see *Jameel v Wall Street Journal Sprl* [2003] EWCA Civ 1694 at paragraphs 10 and 14).

[27] I dismiss the plaintiff's application to strike out the lesser meanings alleged in the defence. I decline to strike out the defence of justification.

***Reynolds* Defence**

[28] The plaintiff applies under Order 18 Rule 19 to strike out the *Reynolds* defence. That involves the plaintiff establishing that it discloses no reasonable defence or it is scandalous, frivolous or vexatious or it may prejudice, embarrass or delay the fair trial of the action or it is otherwise an abuse of the process of the court. It is only in clear and obvious cases that recourse should be had to the summary process under this rule.

[29] The *Reynolds* defence involves 3 key issues namely:

(a) The issue whether the subject matter of the publication was of sufficient public interest;

(b) Whether it was reasonable to include the particular material complained of; and

(c) Whether the publisher had met the standards of responsible journalism or publication.

[30] The question of public interest both in relation to the general subject matter of the article and as to the inclusion of the material complained of, is a matter of law for the judge. It is contended on behalf of the plaintiff that there is no public interest in the general subject matter of the article, that there is no public interest in relation to the question as to whether a witness at a major criminal trial has been subject to a threat and that there is no public interest in the question as to whether witnesses at the criminal trial could be subject to repercussions for giving evidence on behalf of the prosecution. I disagree. The general subject matter is the proper administration of justice and the particular material relates to the evidence of particular witnesses at the trial and the impact on them of giving evidence for the prosecution. The issue for my determination at this stage is whether there is no prospect of the defendant

establishing a sufficient public interest in these matters. I do not consider that the plaintiff has established that there is no such prospect.

[31] The next question is as to whether the plaintiff has established that it is clear and obvious within Order 18 rule 19 that the defendant has not met the standard of responsible journalism. In *Reynolds* Lord Nicholls set out a non-exhaustive list of circumstances which would be relevant to the issue as to whether the standards of responsible journalism had been met in a given case. The 10 circumstances are not to be seen as a series of hurdles to be negotiated in succession by the defendant with a loss of the defence if he cannot pass one of them. The weight to be given to any of the 10 circumstances or to any other relevant circumstance, will vary from case to case. Any disputes of primary fact are for the jury if there is one. The decision on whether, having regard to the admitted or proved facts, the publication was subject to qualified privilege is a matter for the judge. Accordingly, if there is a jury their role is limited to determining questions of disputed facts. The 10 listed factors were:

> "1. The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.
>
> 2. The nature of the information, and the extent to which the subject-matter is a matter of public concern.
>
> 3. The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories.
>
> 4. The steps taken to verify the information.
>
> 5. The status of the information. The allegation may have already been the subject of an investigation which commands respect.
>
> 6. The urgency of the matter. News is often a perishable commodity.
>
> 7. Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary.
>
> 8. Whether the article contained the gist of the plaintiff's side of the story.
>
> 9. The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.
>
> 10. The circumstances of the publication, including the timing."

Reynolds privilege exists where the public interest justifies publication notwithstanding that this carries the risk of defaming an individual who will have no remedy. This requires a balance to be struck between the desirability that the public should receive the information in question and the potential harm that may be caused if the individual is defamed. By a consideration of these circumstances

and any other relevant circumstances, the court is assisted in striking the correct balance in determining the question as to whether the public interest in freedom of expression should prevail over or yield to the public interest in an individual being able to vindicate his or her reputation.

[32] In so far as the plaintiff contends that the defence should be struck out on the basis that it is a clear and obvious case within Order 18 rule 19 that the journalism was not responsible, I reject that contention.

[33] It is correct that no comment was sought from the plaintiff prior to publication. The defendant contends that it was responsible not to do so as asking the plaintiff to comment may have increased the risk to Julia Mongan and to John Stokes. Whether that is why the defendant did not seek any comment, whether there were objective or sensible reasons for coming to that conclusion and if so whether it was responsible on the facts of this case not to seek the plaintiff's comments in such circumstances will depend on the evidence at trial. Even if this circumstance is established against the defendant then that is not determinative of the issue as to whether the journalism was responsible.

[34] In support of the contention that it is a clear and obvious case that the journalism was not responsible the plaintiff calls in aid mistakes made in the article and also wishes to establish by reference to other articles an unjustified and unthinking mindset against the plaintiff. The question as to whether the evidence of the earlier articles is admissible either as similar fact evidence or on some other basis will have to await the trial but it is obvious that there is an area of considerable factual dispute to be resolved if the evidence is admitted. The test at this stage does not involve determining what evidence is admissible but rather determining whether the case is clear and obvious within Order 18 rule 19. That does not involve a detailed consideration as to the legal principles of admissible evidence.

[35] The plaintiff also relies on what it asserts is the unreliable nature of the evidence which was given by Julia Mongan at the criminal trial on the basis that having listened to her evidence it was not responsible to publish allegations made by her. The reliability of Julia Mongan's evidence and therefore as to whether it was responsible journalism to rely on her as a source for publication, can only be determined at trial.

[36] I decline to strike out the *Reynolds* defence.

Mode of Trial

[37] Section 62(2) of the Judicature (Northern Ireland) Act 1978 provides that if any party to the action *so requests* an action in which a claim is made in respect of libel shall be tried with a jury. The way in which trial by jury is requested is governed by the Rules of the Court of Judicature (Northern Ireland) 1980. Order 43, Rule 4(1) provides that the party setting the action down for trial must specify the mode of trial which he requests. If the party setting the action down requests a trial without a jury then any other party may within 7 days after receiving the notice of setting down lodge a request in the appropriate office that the action be tried with a jury and must within 24 hours after lodging such a request send a copy thereof to

every other party.

[38] If that procedure is followed and trial with a jury has been requested then an application can be made for the action to be tried without a jury. The court *may* order that the action or any issue of fact in the action shall be tried without a jury *if it is of opinion* that such trial (a) will substantially involve matters of account; (b) will require any protracted examination of documents or accounts or any technical, scientific or local investigation which cannot conveniently be made with a jury; (c) will be unduly prolonged; or (d) is for any special reason (to be mentioned in the order) unsuitable to be tried with a jury. The onus is on the party applying to establish one of the grounds (a) – (d) and to persuade the court to exercise discretion.

[39] Order 33 Rule 4(5) makes provision for the situation where for instance the plaintiff in setting the action down specifies trial without a jury and the defendant does not lodge a request within 7 days that the action be tried with a jury. In such a situation the defendant can still apply to the court for trial with a jury. However, that would no longer be as of right and the court will only order jury trial if it is persuaded to do so in the exercise of discretion. In such a situation the onus is on the party applying to persuade the court.

[40] The action was set down by the plaintiff who requested trial without a jury. A notice was lodged by the defendant requesting trial with a jury and no point has been taken as to the time within which it was lodged.

[41] In bringing this application the plaintiff relies upon paragraphs (b) that is protracted examination of documents which cannot conveniently be made with a jury, (c) will be unduly prolonged, and (d) is for any special reason (to be mentioned in the order) unsuitable to be tried with a jury.

[42] I was referred to and seek to apply the principles set out in *Haughey v Sunday Newspapers Limited* [1989] NIJB 5 at page 102. I was also referred to Gatley on Libel and Slander, 12th edition at paragraph 34.1 which states:

> "Reynolds privilege cases, which represent a substantial proportion of actions defended by the media, are peculiarly unsuited to trial by jury, by reason of the confused division of functions of judge and jury, and by the jury having to find specific facts, sometimes necessitating an "exam paper" of questions for the jury to answer."

[43] In *Jameel (Mohammed) v Wall Street Journal Sprl* [2005] Q.B. 904 at [70] Lord Phillips MR said that:

> "The division between the role of judge and that of the jury when *Reynolds* privilege is in issue is not an easy one; indeed it is open to question whether jury trial is desirable at all in such a case."

[44] In *Flood v Times Newspapers Ltd* [2012] 2 A.C. 273, at [49] Lord Phillips stated that the judge considering a claim for *Reynolds* privilege as a preliminary issue will generally have to determine meaning, which is normally a matter for the jury. He suggested that the parties should agree to trial by judge alone. The

reason for this was that one of the circumstances to be considered in relation to responsible journalism is the seriousness of the allegation which depends on what the words mean. Once the meaning has been determined there is a balance to be performed because the more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true. But on the other hand the more serious the allegation the greater is likely to be the public interest in the fact that it may be true. So in performing that balancing exercise one has to determine the meaning of the publication which ordinarily is for the jury. Another circumstance to be considered in relation to responsible journalism is the steps taken to verify the article. This circumstance is also informed by the meaning of the article in that the more serious the defamatory meaning then the greater the harm to be caused to the individual then the greater the steps to verify. Alternatively there may be circumstances where the public interest determines that lesser steps to verify are appropriate and that may also be informed by the meaning of the words.

[45] There is a clear interplay between meaning and the *Reynolds* defence. That interplay is potentially complicated in that the test in relation to meanings in relation to the *Reynolds* defence may be different from the single meaning rule to be applied in relation to the rest of the action. In *Bonnick v Morris* [2003] 1 AC 300, Lord Nicholls held that the single meaning rule should not be applied when considering a claim to *Reynolds* privilege. He stated at paragraph 25:

> "Where questions of defamation may arise ambiguity is best avoided as much as possible. It should not be a screen behind which a journalist is 'willing to wound, and yet afraid to strike'. In the normal course a responsible journalist can be expected to perceive the meaning an ordinary, reasonable reader is likely to give to his article. Moreover, even if the words are highly susceptible of another meaning, a responsible journalist will not disregard a defamatory meaning which is obviously one possible meaning of the article in question. Questions of degree arise here. The more obvious the defamatory meaning, and the more serious the defamation, the less weight will a court attach to other possible meanings when considering the conduct to be expected of a responsible journalist in the circumstances."

So a jury deciding meanings in relation to the defence of justification would have to find the single meaning of the article but in deciding meanings for the Reynolds defence would have to consider whether the words were susceptible of another meaning and whether that meaning was one which a responsible journalist could be expected to perceive.

[46] I am not persuaded that the trial will require any protracted examination of documents. It is correct that the defendant's discovered documents are fairly extensive but they can be easily accommodated within one file. There was no attempt by the plaintiff to identify which documents would be introduced in evidence and I am far from convinced that a significant number of documents will be or that they will require protracted examination. Furthermore if some of the documents are introduced in evidence then they consist largely of media reports

of the original trial, the appeal and the retrial of the Plaintiff on the charge of murder of John Mongan. I consider that these documents are in a form which are easily read and understood by jury members and in any event will be handled with skill in their presentation by experienced counsel.

[47] I do not consider that the hearing if tried with a jury will be unduly prolonged. I consider that it will almost always be the case that a trial with a jury will take longer, and is therefore prolonged in comparison to a trial by judge alone, but that does not mean that it is unduly prolonged. If it was otherwise then the principle in section 62(1) of a right to a jury trial would be meaningless.

[48] The plaintiff then relies on special reasons within section 62(1)(d) which are identified as:

> (a) The technical complexity occasioned by the defendant's reliance on defences of justification and the *Reynolds* defence;
> (b) The desirability in such a case for a reasoned judgment; and
> (c) The real risk that the plaintiff will not receive a fair

trial. I will deal with those reasons in reverse order.

[49] It is submitted on behalf of the plaintiff that the defendant's discovered documents consist almost wholly "of lurid and sensational reports of violence amongst members of the travelling community" and that "these reports pander to and nourish a visceral anti-traveller prejudice." That the real purpose of the defendant in claiming a jury trial, is "to attempt to expose the plaintiff to anti- traveller prejudice in the hope that it will skew the outcome." This submission does no justice to our jury system or to the experience of all involved in jury trials of palpable concern of jurors to meet exacting standards of justice. The submission pays no regard to the fact that the plaintiff was unanimously acquitted by a jury or to the fact that it is envisaged that Julia Mongan, a member of the travelling community, will be a witness for the defendant. I reject that submission.

[50] In Gatley on Libel and Slander, 12th edition at paragraph 31.67 it is stated that the desirability of a reasoned judgment is likely to be a weighty factor in favour of a trial alone. Assuming, without deciding that this amounts to a special reason, I do not consider that in the exercise of discretion it should result in the removal of a right to a jury trial given that as in all criminal trials there is a reasoned charge to the jury. I do not accede to the plaintiff's application for trial by judge alone on that ground.

[51] I have already set out the interplay between meanings and the *Reynolds* defence. I consider that there will be difficulties in the jury following directions in relation to meanings for the purposes of justification and damages on the one hand and meanings for the purposes of the *Reynolds* defence on the other which when taken with the number of factual issues and the potential nuances of those issues to be addressed by the jury lead me to the conclusion that this case should be tried by judge alone.

[52] In arriving at that conclusion I take into account that the further amended defence has to be subject to yet further amendments. However a consideration of

the existing further amended defence establishes that there will be an extensive number of factual questions for the jury in relation to the *Reynolds* defence. Instances of this are factual questions as to the experience of the journalist, the research that she carried out, the meetings that were held, the number of days that she was in court during the retrial, whether she was in court when Julia Mongan gave evidence and if so what she made and what she ought reasonably to have made of the credibility of Julia Mongan's evidence, whether the journalist relied on other experienced journalists when she was not in court, and if so what information was provided to her and by whom, whether there is a custom and practice amongst journalists to give greater weight to a source if she has given evidence under oath but not necessarily about all the matters contained in the article, whether there was a genuine perception on behalf of the journalist that there was a risk to the source if comment was sought from the plaintiff, whether the perception was that the risk emanated from the plaintiff or from others, the basis for any such perception, whether there was a genuine perception on behalf of the journalist of a risk that if comment was sought from the plaintiff that Julia Mongan would lose trust in the defendant with the result that a source of information for the public would be lost, the nature and extent of the editorial process and whether it was sufficient in view of the interests in play and the attitude of the journalist and her editor to members of the travelling community in general and to the plaintiff in particular and if an adverse attitude then the degree, effect and whether factually justified. I consider that as the evidence develops at trial a significant number of further factual issues will arise and that this case will present as a list of factual exam questions for the jury.

[53] I consider that the case should be tried without a jury given the complicated factual questions that will have to be addressed by the jury combined with the difficulties presented by the jury's consideration of meanings. Accordingly I order that the action should be tried by judge alone for the special reason of the interaction of the *Reynolds* defence with the other issues in this action.

Conclusion

[54] I dismiss the plaintiff's application in relation to meanings and the application to strike out the *Reynolds* defence.

[55] I accede to the plaintiff's application in relation to the mode of trial.

[56] I will hear counsel in relation to the question of costs.