

Thomas Ernest Rofe - - - - - *Appellant*

v.

Smith's Newspapers, Limited - - - - - *Respondents*

FROM

THE SUPREME COURT OF NEW SOUTH WALES.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 10TH JUNE, 1926.

Present at the Hearing :

VISCOUNT HALDANE.

LORD SHAW.

LORD WRENBURY.

LORD DARLING.

LORD SALVESEN.

[*Delivered by* LORD DARLING.]

This is an appeal from a judgment of the Full Court of the Supreme Court of New South Wales, dated the 10th December, 1924, dismissing a motion by the Appellant that the verdict dated the 14th July, 1924, returned for the respondents in an action tried in the Supreme Court of New South Wales before Mr. Justice Gordon and a special jury should be set aside and a verdict entered for the appellant or that a new trial be had.

The appellant's action was one for libel contained in a newspaper published by the respondents.

The respondents, on the 27th October, 1923, published in their newspaper called "Smith's Weekly" the words complained of:—

"SORRY HISTORY OF T. E. ROFE'S MOTOR-SPIRITUAL
PHILANTHROPY.

"Two years ago Thos. E. Rofe, Chairman of Directors, perpetrated what the 'Daily Telegraph' termed 'a grand

example of practical philanthropy.' It was announced that he had donated £6,000 to various hospitals, and another £6,000 to the Churches of Christ. On October 1st, 1921, 'Smith's Weekly' pointed out that this £12,000 was not in cash but in Natalite shares, of which Rofe had received 50,000 as vendor, together with £5,000 cash; Rofe's philanthropy synchronised with another desperate effort to get his name restored to the roll of attorneys. But he is as far from re-admission to-day as are the hospitals and the churches from their £12,000."

By way of defence, the respondents pleaded (1) not guilty; and (2) that the matters charged are true, and further that it was for the public benefit that the matters complained of should be published.

This plea is in accordance with the following provision of the Defamation Act, 1912, § 7 (Statutes of New South Wales, No. 32 of 1912).

" 1. In any action for defamation, whether oral or otherwise, the truth of the matters charged shall not amount to a defence to such action unless it was for the public benefit that the said matters should be published."

" 2. Where the truth of the said matters is relied upon as a defence to such action it shall be necessary for the defendant in his plea of justification to allege that it was for the public benefit that the said matters should be published, and the particular fact or facts by reason whereof it was for the public benefit that they should be published."

" 3. Unless the said allegation is made out to the satisfaction of the jury, as well as the truth of the matters, the Plaintiff shall be entitled to recover a verdict with such damages as the jury think proper."

The questions left to the jury by the learned Judge at the trial, with their answers to them are these:—

- (1) Is the article . . . defamatory of the plaintiff?—No.
- (2) If that article is defamatory of the plaintiff, are the defamatory statements true in all substantial and material particulars?—Yes.
- (3) If those defamatory statements are true in all substantial and material particulars, were they published at a time and on an occasion and under circumstances which made the publication of those statements for the benefit of the public?—Yes.

In the course of the trial, and also in the arguing of this appeal, many criticisms and strictures concerning the character of the appellant were made. It is to be feared that the point upon which this appeal will now turn was so obscured in the conduct of this attack and defence that it was not present to the minds of the learned Judges who decided in favour of the respondents.

All that matter may be relevant as affecting the amount of damages to be awarded to the plaintiff should he be successful in a new trial—but the measure of damages is not here to be considered.

As their Lordships are of opinion that it is their duty humbly to advise His Majesty that a new trial should be held, and as this opinion is founded on the existence of what they conceive to

be one definite defect in the proceedings, they propose to confine their reasons to that single point—holding as they do that it is neither necessary nor advisable now to introduce matters of controversy which might possibly prove embarrassing should a new trial ever be had.

The allegation in respondents' newspaper that the sum of £12,000 given by appellant "was not in cash but in Natalite shares" was, in the course of the proceedings, admitted to be untrue. Indeed an amendment of the pleadings was made on the day of the trial, the effect of which was to delete from the plea of justification and public benefit so much of it as alleged that appellant had not made to the hospitals a gift of £6,000 in cash. From that moment it has never been disputed that the hospitals, before the libel complained of was published, were in actual enjoyment of a gift, in cash, or its equivalent in War Loan, from the appellant of one half of the entire sum of £12,000, a gift which the respondents had alleged was made, if at all, in almost worthless shares of a Limited Company.

In spite of this fact, indubitably established, the jury have found that the impeached article was "not defamatory of the plaintiff." Their Lordships are of opinion that such a finding is manifestly irreconcilable with the language of the article, and with the admitted facts.

The jury further found that all the allegations against the appellant of which he complained in this action were true. There was no evidence whatever to support this finding, in so far as it related to the donation to the hospitals. Moreover, by admission of respondents, it was established that the allegation to this effect was untrue.

The jury further found—and this, by the law of New South Wales, was necessary to constitute the defence of justification pleaded—that the defamatory statements were "published at a time and on an occasion and under circumstances which made the publication of those statements for the benefit of the public." This, in the circumstances of this case, involves an assertion that it is for the public benefit that defamatory statements should be made concerning the appellant, although they are admitted to be false. This is a proposition to which their Lordships are unable to assent, either in the general or the particular.

In these circumstances their Lordships are of opinion that the verdict for the defendants in this case is such an one "as no jury could have found as reasonable men," and that therefore, according to the well established rule of law, the verdict should be set aside and a new trial had with costs here and below.

Their Lordships will therefore humbly advise His Majesty to that effect.

In the Privy Council.

THOMAS ERNEST ROFFE

v.

SMITH'S NEWSPAPERS, LIMITED.

DELIVERED BY LORD DARLING.

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