No. 15. of 1960

In the Privy Council

ON APPEAL FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN

"TRUTH" (N.Z.) LIMITED, a duly incorporated company having its registered office in Truth Building, Garrett Street, Wellington, and carrying on the business of newspaper proprietors and publishers — APPELLANT

AND

PHILIP NORTH HOLLOWAY, a Member of the House of Representatives and holding therein the portfolio of Minister of Industries and Commerce — RESPONDENT

CASE FOR THE RESPONDENT

1. This is an appeal from the judgment of the Court of Appeal of New Zealand (Gresson P., North and Cleary J. J.) dismissing an appeal from the judgment of Hutchison A. C. J. refusing to grant a motion by the appellant for judgment or, alternatively, for a new trial. The appellant is the proprietor of a weekly newspaper known as "N.Z. Truth" and the respondent is a Minister of the Crown holding the portfolio of Minister of Industries and Commerce. RECORD p. 153, l. 8-14

2. The background of the proceedings is the re-introduction by the New Zealand Government on the 1st January 1958 of import control. Thereafter all importers were required to obtain import licences and the allocation of licences was largely based on 1956 figures. However, there was a special category known as 'C' licences which enabled licences to be issued

in approved circumstances to a person who had not been an importer of the commodity in 1956. The issue of all import licences was the special responsibility of the Customs Department but the Industries and Commerce Department had the responsibility of making recommendations in connec-
p. 137, l. 8-17 tion with the issue of licences.

3. On the 27th January 1959 and on the 3rd February 1959 the appellant published articles critical of the business relations between Mr. Freer, a Member of Parliament, and Mr. Judd an Auckland businessman with importing interests. The two articles were also critical of the financial affairs of Mr. Freer personally and both contained questions which the
p. 137, l. 18-41 Prime Minister Mr. Nash was invited to answer and which in fact were not
p. 138, l. 1-8 answered by him.

4. On the 24th March 1959 a third article appeared featured by large headlines which read: "This Ex-Russian's Import Licences should be investigated". It was claimed that a document which purported to be a statement of Mr. Freer's financial situation had been privately circulated since he left New Zealand and that included therein was a sum of £2,200 due to Freer from an unknown source which was described as "commission on a licence for £44,000". It was asserted that this licence was in the name of Judd whose real name "Truth" informed its readers was Hyman Yudt, a Russian by birth, who it said was preparing to leave the country. "Truth" demanded that the Government should take immediate steps to hold "a full, searching and impartial inquiry" into import and other dealings between Judd and Freer. Reference was made to the "Lynskey inquiry" in England when "an adept operator named Sidney Stanley was shown to have had certain dealings with a British junior minister". The paper informed its readers that someone had seen Judd with the object of getting from him information about import procedure and had been told by Judd to "see Phil and Phil would fix it"; that Judd, however, warned him "whatever he did, not to let Mr. Nash hear about it". It was stated that "By Phil his caller understood him to mean the Hon. Philip North Holloway, the Minister of Industries and Commerce". The article ended on the note that there should be an inquiry which should extend to the actions of responsible Ministers and others including Mr. Holloway, each of whom should be "asked for their explanations" and that "In Truth's view the New Zealand Labour Government should show itself no less meticulous in preventing any suspicion of under-the-counter dealings with Parliamentarians than did the British Labour Government when it dealt with Sidney
p. 138, l. 9-33 Stanley".

5. The evidence at the trial held in the Supreme Court, Wellington, on the 2nd, 3rd, 4th, 5th and 8th June 1959 included that of the head of

the Department of Industries and Commerce and a production of the departmental files and showed—

(i) That Judd had not received a licence of £44,000 as stated in the article; p. 139, l. 3-16

(ii) That he had received a licence for £10,000 later reduced by the Customs Department to £7,000 enabling him to import Czechoslovakian glass; p. 139, l. 16-18

(iii) That Mr. Freer had interested himself in the matter and had introduced Mr. Judd to the respondent who received him as an approved and accredited representative of the Czechoslovakian Government; and the Czechoslovakian Consulate in Wellington confirmed that this was his status; p. 139, l. 18-20 p. 73, l. 47 p. 74, l. 1

(iv) That as a result of a series of interviews the respondent had recommended to Cabinet that a bi-lateral trade agreement between Czechoslovakia and New Zealand should be entered into; p. 139, l. 21-23

(v) That all the relevant facts were placed before Cabinet in the normal way and that Cabinet had approved in principle the entering into of a bi-lateral agreement up to £350,000 in each direction only after careful consideration and of reports furnished not only by the respondent but also by the head of his Department; p. 139, l. 23-26

(vi) That after negotiations upon the bi-lateral agreement had proceeded for some distance Cabinet decided that it would not proceed further with the proposal and by such change in attitude displeased the Czechoslovakian authorities who threatened to withhold completing certain proposed purchases of New Zealand produce unless further progress was made in the negotiations; p. 139, l. 30-34

(vii) That at this delicate stage it was decided to issue Judd with a licence to import a small quantity of Czechoslovakian glass both because it was thought politic in some measure to placate the Czechoslovakian authorities and because the lower costs of such glass would tend to break the price ring or cartel operating both outside and within New Zealand. p. 139, l. 34-38

6. It was held by the Court of Appeal that nothing emerged during the trial which provided the slightest ground for inferring that the respondent throughout the negotiations had acted otherwise than with complete propriety and good faith and it was further held that the appellant had not p. 139, l. 26-28

proved that Mr. Freer had in fact received any money from Judd nor that the document which the article said had been privately circulated had come from Freer or been acknowledged by him.

p. 139, l. 38-40

7. Correspondence passed between the respondent's solicitors and the appellant and its solicitors between April 6th 1959 and April 17th 1959 in regard to the libel contained in the article of 24th March 1959. No retraction or apology was made by the appellant. On the 21st April 1959 the respondent issued a Writ against the appellant claiming £15,000 damages, and the appellant raised the following defences—

(a) a general denial of the truth of the allegations in the Writ;

(b) an averment (with particulars) that the words complained of by the respondent were in their natural and ordinary meaning incapable of being defamatory of the respondent; and

p. 4, l. 25-27

p. 5, l. 21-32

(c) privileged occasion based upon alleged duty and/or common interest.

8. In answer to a notice for particulars the respondent on the 24th April 1959 filed a statement that he relied upon the fact that the words 'see Phil and Phil would fix it', in the context in which the said words were used, were capable of being understood and were understood in a sense defamatory of the plaintiff, more particularly in that the word "fix" was used in the said context in a secondary or colloquial meaning connoting irregular and dishonourable conduct on the part of the plaintiff in connection with the issue of import licences.

p. 3, l. 33-36
p. 4, l. 1-3

9. The jury found in favour of the respondent and awarded him the sum of £11,000 upon which costs and disbursements were subsequently fixed in the sum of £624 11s. 6d.

10. On the 19th June 1959 the appellant filed a notice of motion for judgment in its favour on the ground that the occasion of the publication was privileged or in the alternative for a new trial upon the grounds that the jury had been misdirected upon eleven (11) material points of law and that evidence (particulars of which were given in the motion) had been rejected which ought to have been admitted. The said notice of motion was heard by Sir James Hutchison A.C.J. on 2nd, 3rd, 6th and 7th July 1959 and dismissed on the 23rd July 1959. On the 29th July 1959 the appellant gave notice of appeal to the Court of Appeal on the ground that the said judgment was erroneous in fact and law. The appeal to the Court of Appeal was heard on the 21st, 22nd, 23rd and 24th September 1959 and dismissed on the 16th November 1959 with costs to the respondent. On the 3rd

p. 110, l. 7
p. 111, l. 1-38

March 1960 the Court of Appeal ordered that the appellant have final leave to appeal to Her Majesty in Council from its said judgment of the 16th November 1959. p. 154, l. 8-13

11. At the hearing of the appeal before the Court of Appeal counsel for the appellant stated that he did not propose to proffer any argument upon the alleged misdirections (c) (g) and (h) thus reducing the alleged misdirections from 11 to 8 nor did he propose to proffer any argument upon ground No. 2 of the grounds for a new trial—viz., that evidence had been rejected which ought to have been admitted. In its judgment the Court of Appeal did not therefore deal with (c) (g) or (h) nor with ground No. 2 of the said motion.

12. Since the Order of the Court of Appeal giving final Leave to Appeal to Her Majesty in Council counsel for the appellant has advised the respondent that he does not propose to proffer any argument upon those portions of the judgment of the Court of Appeal that deal with—

(a) privilege

(b) the alleged misdirections (a) (b) (i) (j) and (k).

13. In consequence it would appear that the argument of the appellant upon this appeal will be confined to the alleged misdirections (d) (e) and (f)—viz.

(d) Directing the jury that on the question whether the passage complained of bore the meaning alleged by the plaintiff the fact that the newspaper might have been asking for a general inquiry had no bearing at all. p. 111, l. 14-16

(e) Directing the jury that the case was properly to be dealt with as if the defendant itself had said "See Phil and Phil would fix it". p. 111, l. 17-18

(f) Directing the jury that they should find for the defendant if they thought that the words sued on did not mean what was alleged by the plaintiff, but might mean something less than that, that the Minister was bungling or incompetent or something of that sort, but refraining from specifically directing the jury upon request that they should find for the defendant if they thought the meaning was that, in view of Judd's remarks, an inquiry should include the question whether or not the plaintiff had acted dishonourably in connection with import licences. p. 111, l. 18-26

14. The Respondent will contend that this appeal should be dismissed with costs for the following among other

REASONS

(1) In the light of the summing-up considered as a whole the use of the words complained of in the alleged misdirection (d) did not impose or have the effect of imposing any limitation upon the general direction that the meaning of the offending words depended on the context in which they were used, and they provided the jury with a fair guide upon which to consider their verdict.

(2) As to the alleged misdirection (e) the use of the offending words is properly tested by whether the passage in the article, contextually considered, carried the meaning alleged by the respondent; and the summing-up rightly emphasised that the case should be dealt with as if the writer of the article had used the words himself.

(3) As to the alleged misdirection (f) the trial Judge rightly refrained from directing the jury to consider placing upon the offending words a meaning that was not a possible meaning: and, alternatively, in the events that occurred during the summing-up and immediately before the jury retired it is reasonable to assume that the jury did consider the placing upon the offending words the meaning sought by the appellant and rejected such meaning as a possible meaning to place upon them.

(4) If any of the alleged misdirections (d) (e) or (f) was in fact a misdirection then upon a consideration of the summing-up as a whole it did not and could not have amounted to a substantial miscarriage of justice that would warrant the ordering of a new trial.

W. E. LEICESTER,
Counsel for the Respondent.

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CASE FOR THE RESPONDENT

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