Trinity Term
[2019] UKSC 27
On appeal from: [2017] EWCA Civ 1334

JUDGMENT

Lachaux (Respondent) *v* Independent Print Ltd and another (Appellants)

before

Lord Kerr
Lord Wilson
Lord Sumption
Lord Hodge
Lord Briggs

JUDGMENT GIVEN ON

12 June 2019

Heard on 13 and 14 November 2018

Appellants
David Price QC
Jonathan Price
(Instructed by David Price, Solicitor Advocate)

Respondent
Adrienne Page QC
Godwin Busuttil
(Instructed by Taylor Hampton)

Intervener (Media Lawyers Association)
Guy Vassall-Adams QC
Romana Canneti
Edward Craven
(*written submissions only*)

Appellants:-
(1) Independent Print Ltd
(2) Evening Standard Ltd

LORD SUMPTION: (with whom Lord Kerr, Lord Wilson, Lord Hodge and Lord Briggs agree)

Introduction

1. The tort of defamation is an ancient construct of the common law. It has accumulated, over the centuries, a number of formal rules with no analogue in other branches of the law of tort. Most of them originated well before freedom of expression acquired the prominent place in our jurisprudence that it enjoys today. Its coherence has not been improved by attempts at statutory reform. Statutes to amend the law of defamation were enacted in 1888, 1952, 1996 and 2013, each of which sought to modify existing common law rules piecemeal, without always attending to the impact of the changes on the rest of the law. The Defamation Act 2013 is the latest chapter in this history. Broadly speaking, it seeks to modify some of the common law rules which were seen unduly to favour the protection of reputation at the expense of freedom of expression. In particular, there had been criticism of a state of the law in which persons resident outside the United Kingdom with only a very limited reputation in the United Kingdom were able to sue here for defamation and obtain substantial damages. One of the principal provisions of the new Act was section 1, which provided that a statement was not to be regarded as defamatory unless it had caused or was likely to cause "serious harm" to the claimant's reputation.

2. The claimant, Bruno Lachaux, is a French aerospace engineer who at the relevant time lived with his British wife Afsana in the United Arab Emirates. The marriage broke down, and in April 2011 he began divorce proceedings in the UAE courts and sought custody of their son Louis. In March 2012, Afsana went into hiding with Louis in the UAE, claiming that she would not get a fair trial in its courts. In August 2012, the UAE court awarded custody of Louis to his father. In February 2013, Mr Lachaux initiated a criminal prosecution against Afsana for abduction. In October of that year, having found out where Louis was, he took possession of him under the custody order. In January and February 2014, a number of British newspapers published articles making allegations about Mr Lachaux's conduct towards Afsana during the marriage and in the course of the divorce and custody proceedings. These appeals arise out of two libel actions begun by him in the High Court on 2 December 2014 against the publishers of the *Independent* and the *Evening Standard*, and a third begun on 23 January 2015 against the publisher of the *i*. Other libel actions were begun against the publisher of similar articles in another online newspaper, but we are not directly concerned with them on these appeals.

3. In February 2015, Eady J conducted a meaning hearing. In a reserved judgment, he held that the article in the *Independent* bore eight defamatory meanings, and the article in the *Evening Standard* 12. In summary, the articles were held to have meant (inter alia) that Mr Lachaux had been violent and abusive towards his wife during their marriage, had hidden Louis' passport to stop her removing him from the UAE, had made use of UAE law and the UAE courts to deprive her of custody and contact with her son, had callously and without justification taken Louis out of her possession, and then falsely accused her of abducting him. For the purpose of the trial of the issue before of serious harm, which took place before Warby J in July 2015, the newspapers did not contest the primary facts set out in Mr Lachaux's Particulars of Claim. Their case was that the statements in the articles were not defamatory because they did not meet the threshold of seriousness in section 1(1) of the Act of 2013. To appreciate the force of this point, it is necessary to summarise some well-established features of the common law relating to damage to reputation.

The common law background

4. The law distinguishes between defamation actionable per se and defamation actionable only on proof of special damage. But although sharing a common label, these are very different torts with distinct historical origins. Libel, which is always actionable per se, originated in the disciplinary jurisdiction of the ecclesiastical courts and the criminal jurisdiction of the Court of Star Chamber. The gist of the tort is injury to the claimant's reputation and the associated injury to his or her feelings. Defamation actionable per se comprised, in addition to all libels, four categories of slander which were assimilated to libel on account of their particular propensity to injure the reputation of the claimant. These categories were (i) words imputing criminal offences, (ii) words imputing certain contagious or infectious diseases, and (iii) words tending to injure a person in his or her office, calling, trade or profession. The Slander of Women Act 1891 added (iv) words imputing unchastity to a woman. In these cases, the law presumes injury to the claimant's reputation and awards general damages in respect of it. These are not merely compensatory, but serve to vindicate the claimant's reputation. In a frequently quoted passage of his speech in *Broome v Cassell & Co Ltd* [1972] AC 1027, 1071, Lord Hailsham LC acknowledged that this

> "… may put the plaintiff in a purely financial sense in a much stronger position than he was before the wrong. Not merely can he recover the estimated sum of his past and future losses, but, in case the libel, driven underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge ..."

Special damage, ie pecuniary loss caused by the publication, may be recovered in addition, but must be proved.

5. By comparison, slander which is not actionable per se originated as a common law action on the case, and is governed by principles much closer to those of the law of tort generally. The law does not presume injury to reputation by mere oral statements and treats injury to feelings as insufficient to found a cause of action. Special damage, representing pecuniary loss rather than injury to reputation, must be proved: see *McGregor on Damages*, 20th ed (2017), paras 46.002, 46.003; *Gatley on Libel and Slander*, 12th ed (2013), para 5.2. The interest which the law protects in cases where a defamatory statement is actionable per se differs from that which it protects in other cases. The gist of the tort where the statement is not actionable per se is not injury to reputation but, as Bowen LJ observed in *Ratcliffe v Evans* [1892] 2 QB 524, 532, wrongfully inflicted pecuniary loss: cf *Jones v Jones* [1916] 2 AC 481, 490 (Viscount Haldane). Indeed, it is an open question, which has given rise to conflicting dicta, whether general damage is recoverable at all in such cases.

6. For present purposes a working definition of what makes a statement defamatory, derived from the speech of Lord Atkin in *Sim v Stretch* [1936] 2 All ER 1237, 1240, is that "the words tend to lower the plaintiff in the estimation of right-thinking members of society generally." Like other formulations in the authorities, this turns on the supposed impact of the statement on those to whom it is communicated. But that impact falls to be ascertained in accordance with a number of more or less artificial rules. First, the meaning is not that which other people may actually have attached to it, but that which is derived from an objective assessment of the defamatory meaning that the notional ordinary reasonable reader would attach to it. Secondly, in an action for defamation actionable per se, damage to the claimant's reputation is presumed rather than proved. It depends on the inherently injurious character (or "tendency", in the time-honoured phrase) of a statement bearing that meaning. Thirdly, the presumption is one of law, and irrebuttable.

7. In two important cases decided in the decade before the Defamation Act 2013, the courts added a further requirement, namely that the damage to reputation in a case actionable per se must pass a minimum threshold of seriousness.

8. The first was *Jameel (Yousef) v Dow Jones & Co Inc* [2005] QB 946. The Saudi claimant had sued the publishers of the *Wall Street Journal* for a statement published online in Brussels to the effect that he had been funding terrorism. The statement was shown to have reached just five people in England and Wales. The Court of Appeal rejected a submission that the conclusive presumption of general damage was incompatible with article 10 of the Human Rights Convention. Lord Phillips of Worth Matravers MR, delivering the leading judgment, observed (para 37) that "English law has been well served by a principle under which liability turns

on the objective question of whether the publication is one which *tends* to injure the claimant's reputation." But he held that the presumption could not be applied consistently with the Convention in those cases, said to be rare, where damage was shown to be so trivial that the interference with freedom of expression could not be said to be necessary for the protection of the claimant's reputation. The appropriate course in such a case was to strike out the claim, not on the ground that it failed to disclose a cause of action, but as an abuse of process. The Court of Appeal held that it was an abuse of process for the action before them to proceed "where so little is now seen to be at stake", and duly struck it out. The effect of this decision was to introduce a procedural threshold of seriousness to be applied to the damage to the claimant's reputation. Two things are clear from the language of Lord Phillips' judgment. One is that the threshold was low. The damage must be more than minimal. That is all. Secondly, the Court of Appeal must have thought that the operation of the threshold might depend, as it did in the case before them, on the evidence of actual damage and not just on the inherently injurious character of the statement in question.

9. The second case was *Thornton v Telegraph Media Group Ltd* [2011] 1 WLR 1985, a decision of Tugendhat J. It arose out of an application by the Defendant newspaper to strike out part of the Particulars of Claim in a libel action on the ground that the statement complained of was incapable of being defamatory. Allowing the application, Tugendhat J held that in addition to the procedural threshold recognised in *Jameel*, there was a substantive threshold of seriousness to be surmounted before a statement could be regarded as meeting the legal definition of "defamatory". The judge's definition (para 96) was that a statement "may be defamatory of him because it *substantially* affects in an adverse manner the attitude of other people towards him, *or has a tendency so to do*" (the emphasis is the judge's). He derived this formula from dicta of Lord Atkin in *Sim v Stretch* [1936] 2 All ER 1237. At para 94, he dealt with the relationship between the definition thus arrived at and the presumption of general damage, in terms which suggested that (unlike the *Jameel* test) the application of the threshold depended on the inherent propensity of the words to injure the claimant's reputation:

> "If the likelihood of adverse consequences for a claimant is part of the definition of what is defamatory, then the presumption of damage is the logical corollary of what is already included in the definition. And conversely, the fact that in law damage is presumed is itself an argument why an imputation should not be held to be defamatory unless it has a tendency to have adverse effects upon the claimant. It is difficult to justify why there should be a presumption of damage if words can be defamatory while having no likely adverse consequence for the claimant. The Court of Appeal in *Jameel (Yousef)'s* case [2005] QB 946 declined to find that the presumption of damage was

itself in conflict with article 10 (see para 37), but recognised that if in fact there was no or minimal actual damage an action for defamation could constitute an interference with freedom of expression which was not necessary for the protection of the claimant's reputation: see para 40."

Section 1 of the Defamation Act 2013

10. Section 1 is in the following terms:

> "**1 Serious harm**
>
> (1) A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.
>
> (2) For the purposes of this section, harm to the reputation of a body that trades for profit is not 'serious harm' unless it has caused or is likely to cause the body serious financial loss."

11. On the present appeals, the rival constructions of this provision may be summarised as follows. The case on behalf of Mr Lachaux is that the Act leaves unaffected the common law presumption of general damage and the associated rule that the cause of action is made out if the statement complained of is inherently injurious or, as Lord Phillips put it in *Jameel* and Tugendhat J in *Thornton*, it has a "tendency" to injure the claimant's reputation. The effect of the provision on this view of the matter is simply that the inherent tendency of the words must be to cause not just some damage to reputation but serious harm to it. The defendant publishers dispute this. Their case is that the provision introduces an additional condition to be satisfied before the statement can be regarded as defamatory, on top of the requirement that the words must be inherently injurious. It must also be shown to produce serious harm in fact. They submit that unless it was self-evident that such a statement must produce serious harm to reputation, this would have to be established by extraneous evidence. Warby J, after a careful analysis of the Act and the antecedent common law, substantially accepted the defendant publishers' case on the law. But he found, on the facts, that the relevant newspaper articles did cause serious harm to Mr Lachaux. The Court of Appeal (McFarlane, Davis and Sharp LJJ) [2018] QB 594, preferred Mr Lachaux's construction of section 1, but they upheld the judge's finding of serious harm.

12. Although the Act must be construed as a whole, the issue must turn primarily on the language of section 1. This shows, very clearly to my mind, that it not only raises the threshold of seriousness above that envisaged in *Jameel (Yousef)* and *Thornton*, but requires its application to be determined by reference to the actual facts about its impact and not just to the meaning of the words.

13. In the first place, the relevant background to section 1 is the common law position, as I have summarised it. Parliament is taken to have known what the law was prior to the enactment. It must therefore be taken to have known about the decisions in *Jameel (Yousef)* and *Thornton* and the basic principles on which general damages were awarded for defamation actionable per se. There is a presumption that a statute does not alter the common law unless it so provides, either expressly or by necessary implication. But this is not an authority to give an enactment a strained interpretation. It means only that the common law should not be taken to have been altered casually, or as a side-effect of provisions directed to something else. The Defamation Act 2013 unquestionably does amend the common law to some degree. Its preamble proclaims the fact ("an act to amend the law of defamation"). It is not disputed that there is a common law presumption of damage to reputation, but no presumption that it is "serious". So the least that section 1 achieved was to introduce a new threshold of serious harm which did not previously exist. The question on these appeals is what are the legal implications of that change, and what necessarily follows from it. Even where some change to the common law was intended, it should not go any further than that. As Lord Reid observed in *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, 615, Parliament "can be presumed not to have altered the common law further than was necessary".

14. Secondly, section 1 necessarily means that a statement which would previously have been regarded as defamatory, because of its inherent tendency to cause some harm to reputation, is not to be so regarded unless it "has caused or is likely to cause" harm which is "serious". The reference to a situation where the statement "has caused" serious harm is to the consequences of the publication, and not the publication itself. It points to some historic harm, which is shown to have actually occurred. This is a proposition of fact which can be established only by reference to the impact which the statement is shown actually to have had. It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated. The same must be true of the reference to harm which is "likely" to be caused. In this context, the phrase naturally refers to probable future harm. Ms Page QC, who argued Mr Lachaux's case with conspicuous skill and learning, challenged this. She submitted that "likely to cause" was a synonym for the inherent tendency which gives rise to the presumption of damage at common law. It meant, she said, harm which was *liable* to be caused given the tendency of the words. That argument was accepted in the Court of Appeal. She also submitted, by way of alternative, that if the phrase referred to the factual probabilities, it must have been directed to applications for pre-publication

injunctions quia timet. Both of these suggestions seem to me to be rather artificial in a context which indicates that both past and future harm are being treated on the same footing, as functional equivalents. If past harm may be established as a fact, the legislator must have assumed that "likely" harm could be also. As to pre-publication injunctions, the section is designed to import a condition to be satisfied if the statement is to be regarded as defamatory at all. It is not concerned with the remedies available for defamation, whether interlocutory or final. It is right to add that pre-publication injunctions are extremely rare, because of the well-established constraints on judicial remedies which restrict freedom of expression in advance of publication.

15. Thirdly, it is necessary to read section 1(1) with section 1(2). Section 1(2) is concerned with the way in which section 1(1) is to be applied to statements said to be defamatory of a body trading for profit. It refers to the same concept of "serious harm" as section 1(1), but provides that in the case of such a body it must have caused or be likely to cause "serious financial loss". The financial loss envisaged here is not the same as special damage, in the sense in which that term is used in the law of defamation. Section 1 is concerned with harm to reputation, whereas (as I have pointed out) special damage represents pecuniary loss to interests other than reputation. What is clear, however, is that section 1(2) must refer not to the harm done to the claimant's reputation, but to the loss which that harm has caused or is likely to cause. The financial loss is the measure of the harm and must exceed the threshold of seriousness. As applied to harm which the defamatory statement "has caused", this necessarily calls for an investigation of the actual impact of the statement. A given statement said to be defamatory may cause greater or lesser financial loss to the claimant, depending on his or her particular circumstances and the reaction of those to whom it is published. Whether that financial loss has occurred and whether it is "serious" are questions which cannot be answered by reference only to the inherent tendency of the words. The draftsman must have intended that the question what harm it was "likely to cause" should be decided on the same basis.

16. Finally, if serious harm can be demonstrated only by reference to the inherent tendency of the words, it is difficult to see that any substantial change to the law of defamation has been achieved by what was evidently intended as a significant amendment. The main reason why harm which was less than "serious" had given rise to liability before the Act was that damage to reputation was presumed from the words alone and might therefore be very different from any damage which could be established in fact. If, as Ms Page submits, the presumption still works in that way, then this anomaly has been carried through into the Act. Suppose that the words amount to a grave allegation against the claimant, but they are published to a small number of people, or to people none of whom believe it, or possibly to people among whom the claimant had no reputation to be harmed. The law's traditional answer is that these matters may mitigate damages but do not affect the defamatory character

of the words. Yet it is plain that section 1 was intended to make them part of the test of the defamatory character of the statement.

17. I agree, as the judge did, that this analysis is inconsistent with the previous common law governing statements actionable per se. But it is inconsistent with it only to this extent: that the defamatory character of the statement no longer depends only on the meaning of the words and their inherent tendency to damage the claimant's reputation. To that extent Parliament intended to change the common law. But I do not accept that the result is a revolution in the law of defamation, any more than the lower thresholds of seriousness introduced by the decisions in *Jameel* and *Thornton* effected such a revolution. Ms Page argued that to construe section 1 in the way that I have done would transform the way in which the Limitation Act 1980 applies to actions for defamation; and that it would effectively abolish the distinction between defamation actionable per se and defamation actionable only on proof of special damage. In both respects, this was said to be inconsistent with other provisions of the Act, notably sections 8 and 14.

18. Section 8 is concerned with limitation. Section 4A of the Limitation Act 1980 provides for a limitation period in defamation actions of one year from the accrual of the cause of action. The cause of action is treated at common law as accruing on publication where it is actionable per se, and on the occurrence of special damage in other cases. Successive publications therefore give rise at common law to distinct causes of action. Section 8 of the Defamation Act 2013 provides that where a statement has been made to the public or a section of the public (for example in a newspaper) and later republished in the same or substantially the same terms, "any cause of action against the [same] person for defamation in respect of the subsequent publication is to be treated as having accrued on the date of the first publication." The object of this provision is to deprive claimants of the right to sue on a further publication by the same person of substantially the same defamatory statement, more than a year after the first publication. They must sue on the first publication or run the risk of being time-barred. The argument is that section 8 assumes that the common law rule that the cause of action accrues on publication subsists, subject only to the modification that the accrual of the cause of action for a qualifying second publication is backdated to the date of the first. Therefore, it is said, section 1 must be construed on the footing that the cause of action is complete on publication and not on some later date at which "serious harm" may occur. One of the problems of legislating piecemeal for different aspects of the law of defamation, as the Act of 2013 does, is that the interrelation between different rules may be overlooked. I rather doubt whether Parliament got to grips with the implications of section 1 for limitation. I would not therefore modify my construction of section 1, which I regard as clear, even if I agreed with Ms Page that its effect was to postpone the accrual of the cause of action for defamation actionable per se. But I do not agree with her about that. It is necessary to distinguish between the damage done to an interest protected by the law, and facts which are merely evidence of the extent of that

damage. Where a statement is actionable per se, the interest protected by the law is the claimant's reputation. As an element in the cause of action for defamation, publication does not mean commercial publication, but communication to a reader or hearer other than the claimant. The impact of the publication on the claimant's reputation will in practice occur at that moment in almost all cases, and the cause of action is then complete. If for some reason it does not occur at that moment, the subsequent events will be evidence of the likelihood of its occurring. In either case, subsequent events may serve to demonstrate the seriousness of the statement's impact including, in the case of a body trading for profit, its financial implications. It does not follow that those events must have occurred before the claimant's cause of action can be said to have accrued. Their relevance is purely evidential. The position is different where a statement is not actionable per se, because the interest protected by the law in that case is purely pecuniary. The pecuniary loss must therefore have occurred.

19. Section 14 is concerned only with the law of slander. It abolishes two of the four categories of slander actionable per se, by repealing the Slander of Women Act 1891 which made the imputation of unchastity to a woman actionable per se, and by providing that an imputation that a person has a contagious or infectious disease is not to be actionable without proof of special damage. The argument is that since section 14 abolishes two of the categories of slander actionable per se, section 1 should not be read as abolishing all of them. The fallacy of this argument is that it assumes that section 1 does abolish all of them. I do not think that it does. To say that a slander is actionable per se simply means that it is actionable without proof of special damage. That is still the case for the two surviving special categories of slander. As I have pointed out above, special damage in this context means damage representing pecuniary loss, not including damage to reputation. Section 1 is not concerned with special damage in that sense but with "harm to the reputation of the claimant", ie with harm of the kind represented by general damage. It simply supplements the common law by introducing a new condition that harm of that kind must be "serious" and in the case of trading bodies that it must result in serious financial loss.

20. The Court of Appeal's analysis not only gives little or no effect to the language of section 1. It is to my mind internally contradictory. Davis LJ, who delivered the only reasoned judgment, accepted the submission on behalf of Mr Lachaux that the seriousness of the harm caused to the claimant's reputation by the publication depended on the inherent tendency of the words. But he appears to have thought (paras 70-73) that where this was "serious", the result was to set up an inference of fact, which it was open to the defendant to rebut by evidence. As Ms Page accepted, this will not do. The common law rule was that damage to reputation was presumed, not proved, and that the presumption was irrebuttable. If the common law rule survives, then there is no scope for evidence of the actual impact of the publication. That is the main reason why in my opinion it cannot survive. Davis LJ

has, with respect, accepted the legal analysis advanced on behalf of Mr Lachaux, while attaching to it the consequences of the legal analysis advanced on behalf of the newspapers. In my opinion, Warby J's analysis of the law was coherent and correct, for substantially the reasons which he gave.

Application to this case

21. On the footing that (as I would hold) Mr Lachaux must demonstrate as a fact that the harm caused by the publications complained of was serious, Warby J held that it was. He heard evidence from Mr Lachaux himself and three other witnesses of fact, and received written evidence from his solicitor. He also received agreed figures, some of them estimates, of the print runs and estimated readership of the publications complained of and the user numbers for online publications. He based his finding of serious harm on (i) the scale of the publications; (ii) the fact that the statements complained of had come to the attention of at least one identifiable person in the United Kingdom who knew Mr Lachaux and (iii) that they were likely to have come to the attention of others who either knew him or would come to know him in future; and (iv) the gravity of the statements themselves, according to the meaning attributed to them by Sir David Eady. Mr Lachaux would have been entitled to produce evidence from those who had read the statements about its impact on them. But I do not accept, any more than the judge did, that his case must necessarily fail for want of such evidence. The judge's finding was based on a combination of the meaning of the words, the situation of Mr Lachaux, the circumstances of publication and the inherent probabilities. There is no reason why inferences of fact as to the seriousness of the harm done to Mr Lachaux's reputation should not be drawn from considerations of this kind. Warby J's task was to evaluate the material before him, and arrive at a conclusion on an issue on which precision will rarely be possible. A concurrent assessment of the facts was made by the Court of Appeal. Findings of this kind would only rarely be disturbed by this court, in the absence of some error of principle potentially critical to the outcome.

22. It was submitted on behalf of the defendant newspapers that there were errors of principle in the judge's treatment of the facts. It was said that the injury to Mr Lachaux's reputation was at least in part the result of artificial legal rules, notably the "repetition rule" which treats as defamatory the reporting, even without endorsement, of another person's statement; and the *Dingle* rule (see *Associated Newspapers Ltd v Dingle* [1964] AC 371) that a defendant cannot rely in mitigation of damages on the fact that similar defamatory statements have been published about the same claimant by other persons. The argument was that while these rules of law are well established, they do not affect the factual inquiry required by section 1, namely whether the harm caused by a particular publication was serious. It was also said that the judge should not have taken account of the damage that Mr Lachaux's reputation might suffer in the eyes of people who might get to know him in future.

Warby J must have rejected all of these submissions, and the Court of Appeal agreed with him. So do I.

23. The repetition rule is a rule governing the meaning of a statement and the availability of the defence of truth. A statement that someone else has made a defamatory statement about the claimant, although literally true, is treated as equivalent to a direct statement to the same effect. The policy is that "repeating someone else's libellous statement is just as bad as making the statement directly": *Lewis v Daily Telegraph* [1964] AC 234, 260 (Lord Reid). The rule is nothing to do with the threshold of seriousness, and nothing in the 2013 Act can be taken as implicitly abolishing it or limiting its application.

24. The effect of the *Dingle* rule is to treat evidence of damage to the claimant's reputation done by earlier publications of the same matter as legally irrelevant to the question what damage was done by the particular publication complained of. It has been criticised, but it is well established. It has the pragmatic advantage of making it unnecessary to determine which of multiple publications of substantially the same statement occurred first, something which in the case of a newspaper would often be impossible to ascertain and might differ from one reader to the next. The practical impact of the *Dingle* rule in the modern law is limited by section 12 of the Defamation Act 1952, which allows a defendant to rely in mitigation of damage on certain recoveries or prospective recoveries from other parties for words to the same effect; and by the operation of the Civil Liability (Contribution) Act 1978. Section 1 of the Act is concerned with the threshold of harm and not with the measure or mitigation of general damage. But both raise a similar question of causation. It would be irrational to apply the *Dingle* rule in one context but not the other, and no one is inviting us to abrogate it. The judge was therefore entitled to apply it.

25. Turning, finally, to the complaint about the impact of the publications on those who did not know Mr Lachaux but might get to know him in future, there is no principled reason why an assessment of the harm to the claimant's reputation should not take account of the impact of the publications on those who had never heard of him at the time. The claimant's reputation is harmed at the time of publication notwithstanding that the reader or hearer knows nothing about him other than what the publication tells him. It cannot make any difference that it is only later, when he comes to know the claimant personally, that the latter's diminished reputation is of any personal interest to him.

Disposal

26. For these reasons, while I would state the law differently from the Court of Appeal, I would dismiss these appeals on the facts.