GEORGE ERNEST PASCOE JONES (*Plaintiff*) ..... APPELLANT;

AND

WILLIAM ANDREW CECIL BENNETT (*Defendant*) ... RESPONDENT.

1968

*Nov. 5, 6, Dec. 11

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Slander—Defamation—Speech given by Premier at meeting of political supporters—Newspaper reporters present—Failure of defences of qualified privilege and fair comment.

The plaintiff was Chairman of the Purchasing Commission established by the *Purchasing Commission Act*, R.S.B.C. 1948, c. 281, from February 15, 1956, until March 26, 1965, and the defendant, at all material times, was the Premier of British Columbia. On October 2, 1964, the Attorney-General of the province caused criminal charges to be laid against the plaintiff alleging his unlawful acceptance of benefits in his capacity as chairman of the Purchasing Commission. On the same day an Order in Council was passed purporting to relieve the plaintiff from all his duties with respect to the Commission until further notice. On January 15, 1965, the criminal charges against the plaintiff were dismissed and on March 8, 1965, an appeal of the Attorney-General from the acquittal of the plaintiff was, on motion made by counsel on behalf of the plaintiff, stricken out as frivolous and vexatious.

The plaintiff having refused to vacate his office, the Provincial Secretary on February 25, 1965, introduced a government bill in the Legislature entitled: "An Act to Provide for the Retirement of George Ernest Pascoe Jones". This bill passed the Legislature and received the assent of the Lieutenant-Governor on March 26, 1965.

On March 5, 1965, the defendant in the course of a speech which he delivered at a meeting of supporters of his political party used the following words: "I'm not going to talk about the Jones boy. I could say a lot, but let me just assure you of this; the position taken by the government is the right position."

In an action for slander based on the words spoken by the defendant at the meeting of March 5, 1965, the plaintiff was successful at trial. On appeal, the Court of Appeal in a unanimous judgment allowed the defendant's appeal and dismissed the action. The plaintiff then appealed to this Court.

Held: The appeal should be allowed.

The Court agreed with the trial judge and the Court of Appeal that the words in question in their natural and ordinary meaning were defamatory and calculated to disparage the plaintiff in his office as Chairman of the Purchasing Commission.

The defence of qualified privilege failed. The Court was not prepared to assent to the proposition asserted by the defence that whenever

*PRESENT: Cartwright C.J. and Martland, Judson, Ritchie and Hall JJ.

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the holder of high elective political office sees fit to give an account of his stewardship and of the actions of the government of which he is a member to supporters of the political party to which he belongs he is speaking on an occasion of qualified privilege. However, assuming, but far from deciding, that had no newspaper reporters been present the occasion would have been privileged, any privilege which the defendant would have had was lost by reason of the fact that the defendant must have known that his words would be communicated to the general public because while he was speaking two reporters sat at a press table in full view of the speaker's table.

As to the defence of fair comment, it was clear that the controversy between the plaintiff and the government was a matter of public interest and a proper subject for comment by any member of the public but the sting of the words complained of did not appear to be comment at all.

Douglas v. Tucker, [1952] 1 S.C.R. 275; *Globe and Mail Ltd. v. Boland,* [1960] S.C.R. 203, applied; *Adam v. Ward,* [1917] A.C. 309, distinguished.

APPEAL from a judgment of the Court of Appeal for British Columbia[1], allowing an appeal from a judgment of Ruttan J. Appeal allowed.

Thomas R. Berger, for the plaintiff, appellant.

John J. Robinette, Q.C., for the defendant, respondent.

The judgment of the Court was delivered by

THE CHIEF JUSTICE:—This is an appeal from a judgment of the Court of Appeal for British Columbia[1] pronounced on January 15, 1968, allowing the appeal of the defendant from a judgment of Ruttan J. pronounced on March 3, 1967, whereby the plaintiff had been awarded $15,000 damages for slander. The judgment of the Court of Appeal directed that the action be dismissed.

It is necessary to state the facts in some detail.

The plaintiff was appointed on February 15, 1956, to be a member and Chairman of the Purchasing Commission established by the *Purchasing Commission Act,* R.S.B.C. 1948, c. 281. Under this Act all supplies needed in the public service of British Columbia were required to be purchased through the Purchasing Commission.

On October 2, 1964, the Attorney-General of British Columbia caused criminal charges to be laid against the plaintiff alleging his unlawful acceptance of benefits in his capacity as Chairman of the Purchasing Commission. On

[1] (1967), 63 W.W.R. 1, 66 D.L.R. (2d) 497.

the same day an Order in Council was passed purporting to relieve the plaintiff from all his duties with respect to the Commission until further order. The plaintiff refused to move out of his office, having been appointed to hold office during good behaviour and being removable only by the Lieutenant-Governor on address of the Legislative Assembly. These events were given widespread publicity throughout British Columbia.

On January 15, 1965, the criminal charges against the plaintiff were dismissed after trial at Victoria in County Court Judges' Criminal Court.

On February 10, 1965, the Attorney-General of British Columbia filed a notice of appeal against the acquittal on a ground involving a question of law alone although the acquittal of the plaintiff was based on the merits as well as on the legal ground that the plaintiff was not "an official of the Government" within the meaning of the section of the Criminal Code under which the charges had been laid.

On February 25, 1965, the Provincial Secretary introduced a Government bill, No. 34, in the Legislature of British Columbia entitled "An Act to Provide for the Retirement of George Ernest Pascoe Jones". The bill provided that the plaintiff be deemed to have been retired and removed as a member and Chairman of the Purchasing Commission as of October 8, 1964, and it provided that he should receive $15,675 in lieu of salary and remuneration from October 1, 1964, to February 15, 1966, less deductions for income tax and superannuation contributions. The bill also provided that the plaintiff would have an option to take either a refund of his past contributions to the Civil Service Superannuation Fund or to receive a superannuation allowance under that statute as if he had remained in office until February 1966. The introduction of this bill created, in the words of one witness, "a storm of controversy".

On March 5, 1965, when Bill 34 was still under debate in the Legislature, the defendant, who was and is the Premier of British Columbia, addressed a meeting of the Social Credit Association at Victoria, B.C., concerning various matters relating to the public affairs of the Province of British Columbia and of political interest and concern to the electors and to the members of his party. Most of the

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persons present were either members or supporters of the Social Credit Party. The Attorney-General and the Minister of Mines as well as several members of the Legislature were present. Two newspaper reporters were also present. The defendant spoke to the meeting briefly commenting on several matters that were then of current interest to the public including the proposed Bank of British Columbia, the generally bright future of the province, the year's budget and the conduct of the members of the opposition parties in the Legislature. During his speech the defendant also made reference to the plaintiff and to the action of the government in introducing Bill 34 with respect to him and, as found by the learned trial Judge, used the following words:

> I'm not going to talk about the Jones boy. I could say a lot, but let me just assure you of this; the position taken by the government is the right position.

On March 8, 1965, the appeal of the Attorney-General from the acquittal of the plaintiff was, on motion made by counsel on behalf of the plaintiff, stricken out as frivolous and vexatious.

On March 15, 1965, the plaintiff in the course of an address to the students of the University of Victoria said that he did not think that the defendant was anxious to get rid of him but that the government had had bad legal advice on the case from its own "non-practising lawyers", and that there were four persons in the government who wanted to get him out.

On March 26, 1965, Bill 34 passed the Legislature and received the assent of the Lieutenant-Governor. On the same day the plaintiff commenced this action for slander based on the words spoken by the Premier at the meeting in Victoria on March 5, 1965, which have been quoted above.

In the statement of claim the substance of the facts recited above, other than the making of the plaintiff's statement to the students of Victoria University, is set out and the pleading continues:

> 17. The Defendant never publicly gave any explanation or any reason for retiring and removing the Plaintiff from office at any time, either in the Legislative Assembly or outside the Legislative Assembly.
>
> 18. All of the facts hereinbefore recited were widely publicized by the press and other news media and were well known to the public.

19. At a meeting of the Social Credit Association of Victoria held on the 5th day of March, 1965, at Victoria, B.C., the Defendant, referring to the Plaintiff, falsely and maliciously spoke and published of the Plaintiff the following words:

> "I'm not going to talk about the Jones boy. I could say a lot, but let me just assure you of this; the position taken by the government is the right position."

20. By the aforementioned words the Defendant meant, in addition to their natural and ordinary meaning, and was understood to mean that the Plaintiff was dishonest and unfit to act as Chairman of the Purchasing Commission and that the Plaintiff ought to be removed from office.

21. The Defendant spoke and published the aforementioned words well knowing that newspaper reporters were present at the meeting and with the knowledge that his words would be printed and published in newspapers throughout the Province and disseminated by other news media throughout the Province, and the aforementioned words were printed and published in newspapers throughout the Province and disseminated by other news media throughout the Province.

22. The aforementioned words were calculated to disparage the Plaintiff in his office as Chairman of the Purchasing Commission.

23. By reason of the premises the Plaintiff has been greatly prejudiced and injured in his credit and reputation and has suffered damage.

In the statement of defence the defendant pleaded

(i) a denial that he had spoken the words complained of;

(ii) that the words in their natural and ordinary meaning are not actionable and did not disparage the plaintiff in his office;

(iii) that the words complained of are incapable of bearing the meaning alleged in the innuendo set out in para. 20 of the Statement of Claim;

(iv) a denial that the defendant "had any knowledge that reporters were present at the alleged meeting or that such words would be printed or disseminated as alleged or at all";

(v) a plea of qualified privilege;

(vi) a plea of fair comment.

The plea of qualified privilege is set out in para. 24 of the statement of defence in the following words:

24. The Defendant repeats paragraphs 19, 20 and 22 of this Statement of Defence and in the alternative the Defendant says in answer to the whole of the Statement of Claim that if he spoke or published the aforesaid words (which is not admitted but is specifically denied) the same

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were spoken or published to certain electors and members of the Social Credit Association on an occasion of qualified privilege, particulars of which are as follows, namely:

> The Defendant as the Premier of the Province of British Columbia and also as the head of a political party, namely the Social Credit Party of British Columbia, had a duty to communicate the position of the Government to electors and to members of his political party who had a legitimate interest in legislation before the Legislature of the Province of British Columbia concerning and regarding the removal from public office of the Plaintiff. The said words were spoken in good faith and in the honest belief that they were true and were spoken without malice towards the Plaintiff and in the premises the Defendant and the aforesaid electors and members of the Defendant's political party had a common and corresponding interest in the subject matter and publication of the said words.

The plea of fair comment is contained in para. 25 of the statement of defence which reads:

> 25. In the further alternative and in further answer to the whole of the Statement of Claim the Defendant repeats paragraph 24 of this Statement of Defence and says that if he spoke or published the aforesaid words (which is not admitted but is specifically denied) the said words were a fair and bona fide comment upon a matter of public interest namely the aforesaid legislation regarding the removal of the Plaintiff from public office and the said words were published by the Defendant without malice and the publication thereof was for the public benefit.

There was no plea of justification.

The action was tried before Ruttan J. without a jury. At the trial counsel for the plaintiff stated that he was not relying on the innuendo which had been pleaded, his submission being that the words complained of in their natural and ordinary meaning, taken in all the circumstances of the case, were defamatory and disparaged the plaintiff in his office of Chairman of the Purchasing Commission.

After a careful review of the evidence the learned trial judge found as a fact that the defendant had spoken the words complained of, as pleaded in para. 19 of the statement of claim quoted above, and went on to hold that, applying the test of what the ordinary man would infer from them, the words in their natural and ordinary meaning were defamatory and calculated to disparage the plaintiff in his office as Chairman of the Purchasing Commission. These findings were accepted by the Court of Appeal and I agree with them. On this branch of the matter I do not find it necessary to add anything to what has been said in the Courts below.

The learned trial Judge rejected the defence of qualified privilege. He held that there was no need or duty which

required the defendant to make the statement complained of and concluded his reasons on this point with the paragraph:

> In any event the occasion was not used to communicate information, for the premier specifically stated he was not going to say anything. In fact he did leave them only with a slanderous imputation against Jones which cannot be justified on the grounds of interest or duty.

The Court of Appeal unanimously reached a contrary conclusion. In that Court during the oral argument counsel for the plaintiff made a concession which is recited and relied on in the reasons of each member of the Court. Bull J.A. refers to it as follows:

> In my respectful view, the learned trial judge took too narrow a view both of the occasion and the revelations made thereat, in the light of all the surrounding circumstances. It is unnecessary to express my reasons for this conclusion, as counsel for the respondent conceded before us, in my opinion correctly, that the dinner meeting at which the appellant's speech was made, was, under the circumstances, an occasion of qualified privilege, and that the "affair" with respect to the respondent could have been, if properly dealt with, a proper subject of qualified privilege protected within that privileged occasion. On this branch of the appeal, the respondent submits that any privilege was lost relying on two general contentions: (1) That apart from malice the appellant did not take advantage of the privileged occasion to make statements about the respondent that would have been within and protected by that privilege, but, on the contrary, uttered defamatory words not reasonably necessary or germane to the occasion and therefore in "excess" or "abuse" thereof; and (2) That there was sufficient evidence before the learned trial judge to support a finding of *express malice,* which the learned trial judge should have found proven, thereby displacing or rendering nugatory the defence of qualified privilege.

It is clear that no such concession was made at any stage of the trial.

At the opening of the appeal we informed counsel that each member of Court had read all of the reasons for judgment in the Courts below, that we did not regard ourselves as bound by the admission made by counsel in the Court of Appeal and that we wished to hear full argument on the question whether the occasion on which the words complained of were uttered was one of qualified privilege having regard especially to the fact that, to the knowledge of the defendant, newspaper reporters were present at the meeting. Following this, we had the advantage of hearing full and able argument from both counsel.

Paragraph 24 of the statement of defence in which the defence of qualified privilege is set up has already been

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quoted. It involves the assertion that whenever the holder of high elective political office sees fit to give an account of his stewardship and of the actions of the government of which he is a member to supporters of the political party to which he belongs he is speaking on an occasion of qualified privilege. I know of no authority for such a proposition and I am not prepared to assent to it. I will assume for the purposes of this appeal that each subject on which the defendant spoke to the meeting was one of public interest. It is not suggested that at the date of the meeting an election was pending. The claim asserted by the defence appears to me to require an unwarranted extension of the qualified privilege which has been held to attach to communications made by an elector to his fellow electors of matters regarding a candidate which he honestly believes to be true and which, if true, would be relevant to the question of such candidate's fitness for office. It is, of course, a perfectly proper proceeding for a member of the Legislature to address a meeting of his supporters at any time but if in the course of addressing them he sees fit to make defamatory statements about another which are in fact untrue it is difficult to see why the common convenience and welfare of society requires that such statements should be protected and the person defamed left without a remedy unless he can affirmatively prove express malice on the part of the speaker.

However, I do not find it necessary to pursue this line of inquiry further because, assuming, although I am far from deciding, that had no newspaper reporters been present the occasion would have been privileged, I am satisfied that any privilege which the defendant would have had was lost by reason of the fact that, as found by the learned trial judge:

> The Premier must have known that whatever he did say would be communicated to the general public. The two reporters sat at a press table in full view of the speaker's table.

This finding was concurred in by the Court of Appeal and is amply supported by the evidence.

In view of the unanimous judgments of this Court in *Douglas v. Tucker*[2], particularly at pp. 287 and 288, and in *Globe and Mail Ltd. v. Boland*[3], it must be regarded as settled that a plea of qualified privilege based on a ground

[2] [1952] 1 S.C.R. 275.

[3] [1960] S.C.R. 203.

of the sort relied on in the case at bar cannot be upheld where the words complained of are published to the public generally or, as it is sometimes expressed, "to the world".

The case at bar must be distinguished from such cases as *Adam v. Ward*[4], where a false charge had been published to the world and it was held that in refuting it the defendant was entitled to address the same audience as had been chosen by the maker of the charge.

In my opinion the defence of qualified privilege fails.

Turning next to the defence of fair comment, it is clear that the controversy between the plaintiff and the government was a matter of public interest and a proper subject for comment by any member of the public but the sting of the words complained of does not appear to me to be comment at all. I am content to adopt the reasons of the learned trial judge for rejecting this defence. The Court of Appeal did not find it necessary to deal with the defence of fair comment as they had upheld the defence based on qualified privilege.

It was submitted that the amount of damages awarded by the learned trial judge was excessive but I can find no ground for interfering with his assessment.

I would allow the appeal with costs in this Court and in the Court of Appeal and restore the judgment of the learned trial judge.

Appeal allowed with costs.

Solicitor for the plaintiff, appellant: Thomas R. Berger, Vancouver.

Solicitor for the defendant, respondent: George L. Murray, Vancouver.

[4] [1917] A.C. 309.