JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 67/88

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.

BETWEEN	**THE GLEANER COMPANY LIMITED**	**APPELLANTS**
AND	**TREVOR MUNROE**	**RESPONDENT**

Emil[illegible] George, Q.C., & Richard Ashenheim
for Appellants

Roy Fairclough for Respondent

March 6, 7, & April 5, 1990

CAREY, J.A.:

This is an appeal against a judgment of Patterson, J., dated 21st October, 1988 whereby he entered judgment for the plaintiff (the respondent in this appeal) in the sum of $12,000.00 against the defendants (the present appellants) in an action for libel. The article which provoked the suit was contained in the "Weekend Star" newspaper under a column entitled "From the Grapevine" with Jack Bean. It was in these terms:-

> "Would you believe that on Thursday May 21, Dr. Munroe (a Senior Lecturer at UWI) addressed a crowded meeting of workers just outside the Examination Hall at UWI, where scores of students were writing their final exams? And that the loud shouts of 'no M-16 or SLR's here!' could be heard all over the campus as the UAWU objected to Police being on the Campus after the sabotage."

The defences put forward were justification and qualified privilege. The learned judge rejected them both but held that even if he were wrong as to the latter defence, the plaintiff had proven express malice. The grounds of appeal as filed, challenged all these conclusions, but Mr. George did not endeavour with any enthusiasm to argue that there was no reasonable basis for the judge holding that justification failed. Seeing that the learned judge's conclusion was based on his assessment of the witnesses who testified in this regard, viz., Dr. Munroe and a Police Superintendent, I would be slow to interfere. But perhaps of greater significance is the fact that the evidence of the police officer destroyed the factual base of the article. Mr. George could not deny that the time at which the officer stated examinees would still be writing exams, would be outside the period prescribed for such activity in the very time-table supplied by the University administration to the police officer.

The main thrust of his submissions was therefore directed at the learned judge's view that the article lacked proper status because "the only interest that the public could have in the article is an interest which is due to idle curiosity or a desire for gossip." This led the judge to express himself thus at page 38:

> "I agree that the conduct of Dr. Munroe is in question, his reputation (as a senior lecturer) is being attacked, but I do not agree that the article questioned the plaintiff's conduct 'as senior lecturer in conflict with his duties as a union leader' as Mr. Wynter claims it does. The defendant is not publishing a report of a meeting - the object of the report is to draw attention to what could be termed the despicable conduct of Dr. Munroe and to subject him to contempt and disparage him in his profession or calling. I do not find that the article falls within the category of what may be called 'fair information on a matter of public interest'."

Perhaps it is as well to provide some background information so that the issues raised in the appeal may easily be appreciated. The respondent enjoys protean qualities: he wears many hats. He is President of the University and Allied Workers Union (UAWU) which represents and bargains on behalf of a variety of categories of employees at the University of the West Indies (UWI), Mona Campus. He is General Secretary of the Workers Party in this country, and thirdly, he is a Senior Lecturer at the University of the West Indies. At the material time, there was a labour dispute between the UAWU and the UWI, there was a strike, there was suspected sabotage of an electrical cable which caused a power outage on the campus and it was exam time. The UAWU publicly disavowed such criminality as the suspected sabotage indicated.

In the circumstances of tension which existed on the Campus, the University administration requested and obtained a police presence there. But the UAWU was less than impressed at the sight of heavily armed police deployed at certain work areas and held a meeting called on the very day examinations commenced. That meeting was held at

Chancellor Hall at 11:00 a.m., where it was decided to stage a march protesting the police presence, and thereafter to disperse. A second meeting, however, was called and took place in the vicinity of the administration block, which is itself close to the examination hall. The learned judge found that Dr. Munroe did address the meeting which was held at a time when examinations were not in progress. The examination time-table showed that exams were held between the hours of 9:00 a.m., to noon and 3:00 p.m., to 6:00 p.m. The evidence given by a Police Superintendent was that the meeting started at about 12:15 - 12:30 p.m., and students were writing papers at that time but by 12:30 p.m., had left the hall.

Mr. Fairclough candidly conceded that he could not support the view of Patterson, J., that the only possible interest the public could have in the article would be out of idle curiosity or a desire for gossip. Despite this concession, which admittedly concludes the issue of qualified privilege in favour of the appellant, I wish, nevertheless, to make a few observations especially as we are differing from the learned judge and cases cited before us may not have been brought to his attention.

There was, I fear, a profound misconception in the learned judge's approach to the defence of qualified privilege. This came about because he took into consideration an irrelevant factor viz., the object of the publication. He held rightly that the impugned article related to the conduct of the respondent, but he concluded wrongly that the article did not question the respondent's conduct as a senior lecturer vis á vis his duties as a union leader. He said this at page 38:

> "The defendant is not publishing a report of a meeting - the object of the report is to draw attention to what could be termed the despicable conduct of Dr. Munroe and to subject him to contempt and disparage him in his profession or calling."

In dealing with qualified privilege as pleaded in this case, the court is called upon to consider whether the public at large were entitled to be told or interested in or had a duty to hear the criminatory matter, and whether the public at large had an interest in hearing that criminatory matter. This approach was approved by this Court in **Gafar v. Francis** (Unreported) CA 45/80 dated 24th July, 1986. The criminatory matter in that case was an imputation amounting to academic dishonesty, "the publication of a work as one's own, when in reality, no original effort or skill had been brought to bear on the task." The trial judge in that case stated at page 45 -

> "In my respectful view, it would not be in the University's best interest to have a lecturer guilty of such conduct on its staff. Right thinking people in the defendant's position, would, without doubt, consider that such conduct be exposed."

Then in **Hopeton Caven v. The Gleaner Company Limited**, Campbell, J., (as he then was) observed at page 6 - "In total, Trade Union activities are undoubtedly matters of public concern", and he stated his reasons in this way at page 12:

> "I would by analogous reasoning say that where in a democratic society, Trade Unions are legally recognized as the medium through which the economic and social welfare of the workers are protected and advanced, and through this industrial peace is promoted, the activities of such Trade Unions, and of their accredited leaders in relation to such activities, are matters the publication of which

> "are eminently for the public benefit."

The imputation which the learned judge accepted, was pleaded as follows -

> "b) That the plaintiff is unfit to be a Senior Lecturer and is inconsiderate of the Welfare of students at the University."

He expressed his findings in this way, at page 26:

> "It seems quite clear to me that the words mean and would be reasonably understood by the ordinary man to mean that the plaintiff, a senior lecturer at the UWI, disrupted scores of students who were writing their final examination by addressing a crowded meeting of workers just outside the examination hall. Surely, such conduct would be reprehensible and disreputable and the ordinary man would say 'that the plaintiff is unfit to be a senior lecturer' and certainly that he 'is in-considerate of the welfare of the students at the university'. There is a clear imputation that the plaintiff is unfit for his profession owing to his disreputable conduct."

He did not find any other of the meanings as pleaded, established, one of which was that the respondent was unfit to be President of the UAWU. The impugned article speaks of Dr. Munroe addressing members of his own Union the UAWU. It is not without significance that his academic status was put in parenthesis, the purpose of the writer being to underline the protean quality of the respondent and indeed the irony of the situation. In my opinion the unfortunate failure of the judge to appreciate the duality of meanings led him into error. With all respect to him, the article was really pointing out the incongruity of a university lecturer and head of a Trade Union addressing his members at a meeting which disrupted the examinees, his own students.

Although the learned judge held that the facts in **Gafar v. Francis** (supra) were distinguishable from the present case, that, I fear, cannot be correct. The conduct held up as disreputable in the former case was academic dishonesty, in the present case, the conduct was that of a University Lecturer disrupting his students while their examinations were in progress. The nature of the conduct was plainly different but both could rightly be stigmatized as serious academic misconduct; neither could be dismissed as idle curiosity or a desire for gossip. Conduct of members of the University academic staff which reflects on their academic competence is, in my view, a matter of legitimate interest to the public. The fact that the University is a public institution is sufficient to make the conduct of academic staff of interest to the general public. A reason was supplied in **Gafar v. Francis** (supra) where this Court approved the judge's opinion that - "the public as tax-payers of a participating country are as concerned about academic standards as persons within the University itself."

I have earlier referred to **Caven v. The Gleaner Co., Ltd.** (supra) as authority for the proposition that Trade Union activities are a matter of public concern and interest. These cases were, in my view, clear authorities which constrained the learned judge to hold otherwise than he did. From the view I have expressed, Mr. Fairclough did not dissent. He agreed that **Gafar v. Francis** could not properly be distinguished from the present case and he acknowledged that he could not support the finding that the matter was one of idle gossip. The arguments advanced by Mr. George are accordingly well founded.

The next issue was that of express malice, which the judge found to have been proved. He found support from the language itself which he characterized as "not to be unnecessarily strong". But he added - "the words 'would you believe' were inserted to attract the attention of those who are interested in gossip and the editor's motive in publishing the article was to disseminate gossip, the truth of which he had no genuine belief." The second basis for his finding of malice appears to be recklessness on the part of Mr. Wynter in verifying the factual material. I say 'appears to be' because the learned judge in his judgment said this at page 41:

> "He says he had been assured that the veracity of the article had been checked with the police but he cannot recall if checks had been made with the plaintiff or the UWI administration; checks were not made with the guild of undergraduates and he assumed that checks would have been made with the examinees."

As to his first ground for support, viz., the language of the article, this was no part of the plaintiff's pleadings and Mr. Fairclough, accordingly, conceded that he could not rely on that factor. At all events, once the learned trial judge found that the language was "not to be unnecessarily strong", then in my view, he could no longer use the language as a factor. On the contrary, there would have to be some finding that the language was exaggerated or unwarranted.

In so far as the second ground went, the suggestion of recklessness was, with all respect to the judge, misconceived. The Editor, Mr. Hector Wynter, said as the judge found, that he was assured that the veracity

of the articles had been checked with the police. The judge then mentioned that no checks were made with the plaintiff or the UWI administration or with the guild of undergraduates.

Everyone would readily agree that an editor is obliged to take reasonable steps to satisfy himself of the accuracy of his sources. This Court has held that where checks are made with senior police officers, it cannot be held that a plaintiff was malicious. Rowe, J.A., (as he then was) in **Gleaner Co. Ltd. v. Sibblies & Smart** (Unreported) SCCA Nos. 32A & 32B/79 dated July 31, 1981, at page 16 made this perfectly clear. He said this -

> "It is safe to postulate that people all over the world have unquestionably acted upon the word of the senior officers of the police force of their country. In Jamaica it is a daily occurrence for members of the police force to give evidence which judges and juries are urged to accept as true and reliable. It is a matter of simple commonsense that if an officer of the rank of Superintendent of Police writes a letter to the Gleaner for publication and the subject matter of that letter appears to be something falling within the jurisdiction or actual knowledge of that rank of Police officer, that the Gleaner could publish without endorsement and without any fear that its action could be termed reckless."

To the like effect, I, in that case, observed at page 37 -

> "But it was entirely reasonable for the editor to accept the word of a senior police officer in the Constabulary Force. If that be right then the Gleaner did not act recklessly."

Seeing then that it was entirely reasonable to act upon the word of a senior police officer, in this case Deputy Superintendent Virgo, it was not open to the learned judge to find malice on that ground. Mr. Fairclough did not seek to argue otherwise. It is sufficient to say with respect to the other sources suggested by the learned judge

that these did not appear practical.

At the end of the day, there was no direct evidence of actual malice. Indeed the judge did say that the evidence did not show malice in the sense of "spite". He perforce had to rely on inference from the publication that it was inspired by malice. As has been shown there was no basis from which any such inference could be drawn.

Malice means not only spite but any "indirect motive". The indirect motive which the judge found was to disseminate gossip. Once it became clear that the subject matter of the article is academic misconduct or alternatively Trade Union activity, then the entire substratum for malice disappears.

For these reasons I came to the conclusion in agreement with my brothers that the judgment could not stand and should be reversed as ordered at the end of counsel's submissions.

CAMPBELL, J.A.:

I agree.

WRIGHT, J.A.:

I am in complete agreement with the reasoning of Carey, J.A., and need say no more.