

Knupffer (Pauper) Vs. London Express Newspaper Limited

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Court : House of Lords

Decided On : Apr-03-1944

Judge : Lord Chancellor, Lord Atkin, Lord Thankerton, Lord Russell of Killowen, Lord Porter

Appeal No. : [1944] UKHL 1

Appellant : Knupffer (Pauper)

Respondent : London Express Newspaper Limited

Judgement :

The Lord Chancellor

MY LORDS,

It is an essential element of the cause of action for defamation that the words complained of should be published of the plaintiff. If the words are not so published, the plaintiff is not defamed and cannot have any right to ask that the defendant should be held responsible to him in respect of them. In the case now before us the learned trial Judge, Mr. Justice Stable, decided that the words of the libel did refer to the plaintiff. The Court of Appeal, consisting of Lord Justice MacKinnon and Lord Justice Goddard, decided that the words could not be regarded as referring to the plaintiff, and consequently allowed the appeal and dismissed the action. This is the issue which we now have to decide.

The Defendants printed and published in their newspaper on July 1st, 1941, the words following, which are set out in the Statement of Claim: -

But the quislings on whom Hitler flatters himself he can build a pro-German movement within the Soviet Union are an migr group called Mlado Russ or Young Russia.

They are a minute body professing a pure Fascist ideology who have long sought a suitable fuehrer-I know with what success. Established in France and the United States they claim to have secret agents able to enter or leave the Soviet Union at will.

Hitler intends to nominate a puppet fuehrer from their ranks to replace the Soviet national leaders of the Kremlin, and establish a reactionary totalitarian serf State on the German and Italian model.

The proposed line of operation is the seducing of Red Army officers from their allegiance to their country and with their aid destroying trade unions, co-operatives, collective farms, and the Soviet Parliamentary system with a ruthless massacre of all the present leaders, great and small, of the Russian people.

The vast majority of Russian migrs repudiate these people, but Hitler is accustomed to find instruments among the despised dregs of every community. He intends Ukrainian pogroms as a starting point for general anarchy in Russia.

In these words there is no specific mention of the Plaintiff from beginning to end, and the only countries in which it is stated that this group of migrs is established are France and the United States. Evidence was given at the trial that the Plaintiff had joined the Young Russia Party in 1928, that in 1935 he became Assistant Representative of the Young Russia Movement in Great Britain, and that in 1938 he was appointed Representative of the Movement in Great Britain and head of the British Branch of the Movement. The headquarters of the Movement were in Paris until June 1940 when they were removed to America.

These facts standing alone, however, do not justify the conclusion that the words complained of are capable of being read as a defamation of the Plaintiff. The

words make allegations of a defamatory character about a body of persons-some thousands in number-who belong to a Society whose members are to be found in many countries. In *O'Brien v. Eason* [1913] 47 Irish L.T. 266, Holmes L.J. and Cherry L.J. ruled that where comments of an alleged defamatory character were made upon an association called the Ancient Order of Hibernians, an individual member of the Order, who was not named nor in any way referred to, could not maintain an action of libel. They referred to a well known dictum of Willes J., uttered more than 50 years before, in *Eastwood v. Holmes* [1858] 11 F. and F. at p. 349 that if a man wrote that all lawyers were thieves, no particular lawyer could sue him unless there is something to point to the particular individual. Where the Plaintiff is not named, the test which decides whether the words used refer to him is the question whether the words are such as would reasonably lead persons acquainted with the Plaintiff to believe that he was the person referred to. There are cases in which the language used in reference to a limited class may be reasonably understood to refer to every member of the class, in which case every member may have a cause of action. A good example is *Browne v. Thomson and Co.* 1912 S.C. 359, where a newspaper article stated that in Queenstown instructions were issued by the Roman Catholic religious authorities that all Protestant shop assistants were to be discharged, and where 7 pursuers who averred that they were the sole persons who exercised religious authority in name and on behalf of the Roman Catholic Church in Queenstown were held entitled to sue for libel as being individually defamed. Lord President Dunedin in that case said at p. 363, I think it is quite evident that if a certain set of people are accused of having done something, and if such accusation is libellous, it is possible for the individuals in that set of people to show that they have been damnified, and it is right that they should have an opportunity of recovering damages as individuals. In the present case, however, the Appellant rejected the view that every member of the Young Russia Group could bring his own action on the words complained of, and relied on his own prominence or representative character in the Movement as establishing that the words referred to himself. There is, however, nothing in the words which refers to one member of the Group rather than another. *Le Fanu v. Malcolmson* (1848) 1 H.L.C. 637 was, it is true, a decision of this

House in which Lord Chancellor Cottenham and Lord Campbell held that the verdict of a jury awarding damages to the owners of a factory in the County of Waterford against the proprietor of a newspaper published in that County could be upheld, notwithstanding that the letter-press in the course of denouncing the alleged cruelty with which factory operatives were treated did not specifically refer to the Plaintiff's factory. It appears, however, in that case that there were circumstances, such as the location of the factory, which enabled the jurors to identify the Plaintiff's factory as the factory pointed at, and the Lord Chancellor observed at p. 664 that if a party can publish a libel so framed as to describe individuals, though not naming them, and not specifically describing them by any express form of words, but still so describing them that it is known who they are, as the jurors have found it to be here, and if those who must be acquainted with the circumstances connected with the party described may also come to the same conclusion, and may have no doubt that the writer of the libel intended to mean those individuals, it would be opening a very wide door to defamation, if parties suffering all the inconvenience of being libelled were not permitted to have that protection which the law affords.

It will be observed that *Le Fanu v. Malcolmson* was a case where there were facts pointing to the particular factory which was meant to be referred to though the article spoke in more general terms of a factory in Waterford. In the present case the statement complained of is not made concerning a particular individual, whether named or unnamed, but concerning a group of people spread over several countries and including considerable numbers. No facts were proved in evidence which could identify the plaintiff as the person individually referred to. Witnesses called for the Appellant were asked the carefully framed question, To whom did your mind go when you read that article?, and they not unnaturally replied by pointing to the Appellant himself. But that is because they happened to know the Appellant as the leading member of the Society in this country, and not because there is anything in the article itself which ought to suggest even to his friends that he is referred to as an individual.

There are two questions involved in the attempt to identify the Appellant as the person defamed. The first question is a question of law-can the article, having

regard to its language, be regarded as capable of referring to the Appellant? The second question is a question of fact, namely, does the article in fact lead reasonable people, who know the Appellant, to the conclusion that it does refer to him? Unless the first question can be answered in favour of the Appellant, the second question does not arise, and where the Trial Judge went wrong was in treating evidence to support the identification in fact as governing the matter, when the first question is necessarily, as a matter of law, to be answered in the negative.

I move that this appeal be dismissed.

Lord Atkin (READ BY LORD THANKERTON)

MY LORDS,

I have read the opinion about to be delivered by my noble friend Lord Porter, and agree with it and with the proposed motion that the appeal be dismissed. I add a few words, however, for I wish to emphasize the point that the judgments in the Court of Appeal appear to over-elaborate the law of libel as applicable to this case. I venture to think that it is a mistake to lay down a rule as to libel on a class, and then qualify it with exceptions. The only relevant rule is that in order to be actionable the defamatory words must be understood to be published of and concerning the Plaintiff. It is irrelevant that the words are published of two or more persons if they are proved to be published of him: and it is irrelevant that the two or more persons are called by some generic or class name. There can be no law that a defamatory statement made of a firm, or trustees, or the tenants of a particular building is not actionable, if the words would reasonably be understood as published of each member of the firm or each trustee or each tenant. The reason why a libel published of a large or indeterminate number of persons described by some general name generally fails to be actionable is the difficulty of establishing that the Plaintiff was in fact included in the defamatory statement: for the habit of making unfounded generalisations is ingrained in ill-educated or vulgar minds: or the words are occasionally intended to be a facetious exaggeration. Even in such cases words may be used which enable the Plaintiff to prove that the words complained of were intended to be published of each member of the group, or at any rate of himself. Too much attention has been paid, I venture to think, in

the textbooks and elsewhere to the decision of Willes J. in 1858 in *Eastwood v. Holmes*, 1F. and F. 347. It is a *nisi prius* decision in which the judge non-suited the Plaintiff both because he thought there was no evidence that the words were published of the Plaintiff, and for other reasons, and so far as the first ground is concerned it appears to me on the facts to be of doubtful correctness. His words, it only reflects on a class of persons are irrelevant unless it means it does not reflect on the Plaintiff: and his instance All lawyers are thieves is an excellent instance of the vulgar generalisations to which I referred. It will be as well for the future for lawyers to concentrate on the question whether the words were published of the Plaintiff rather than on the question whether they were spoken of a class. I agree that in the present case the words complained of are apparently an unfounded generalisation conveying imputations of disgraceful conduct, but not such as could reasonably be understood to be spoken of the Plaintiff.

It becomes unnecessary to deal with the question of excessive damages. I content myself by saying that if the libel had been published of the Plaintiff, while the damages awarded are possibly too high, I do not find myself in any degree in accord with the estimate of the damages suggested by the Court of Appeal.

Lord Thankerton

My Lords,

I concur in the opinions which have just been delivered.

Lord Russell of Killowen

(READ BY LORD THANKERTON)

MY LORDS,

I agree that this appeal fails.

The crucial question in these cases in which an individual Plaintiff sues in respect of defamation of a class or group of individuals is whether on their true construction the defamatory words were published of and concerning the individual Plaintiff. Unless this can be answered in the affirmative he has no cause

of action. It is not, I think, the case of a denned primary rule, with defined exceptions to the rule. I would rather say that in every case it is the question indicated above.

When the construction of the matter complained of comes under consideration, there may be something in the defamatory matter, or in the circumstances in which it is published, which indicates, and enables a jury to find, that particular individuals are defamed, although they are not named. The case of *Le Fanu v. Malcolmson* (1.H.L.C. 637) is an instance of this. Or the class or group can be identified, and is such that each member thereof is necessarily defamed. The case of *Browne v. Thomson* (1912, S.C. 359) is an instance of this. A body of trustees or directors would furnish another instance in which defamation of the body involves defamation of each member thereof.

The present case, however, is far removed from these considerations. The newspaper article makes allegations about a body of persons, some thousands in number, established in France and the United States of America. It makes no reference of any kind to the Plaintiff or even to England. There is nothing in it which would enable anyone to identify any person as being a member of the body. All that can be said is that a person who read it and who knew that the Plaintiff was a member of the body would know that he was one of the numerous individuals from whose ranks Hitler hoped at some time to nominate a puppet fuehrer in Russia. Nothing more than that. That is really all that I can attribute as the meaning of the answers given by the Plaintiff's friends to the carefully worded and stereotyped question of the Plaintiff's Counsel, viz., To whom did your mind go when you "read that article?"

In my opinion it is impossible to construe the article in any way which would justify the view that it contained defamatory matter published of and concerning the Plaintiff.

Lord Porter(READ BY LORD MACMILLAN)

MY LORDS,

This case raises once again the question which is commonly expressed in the form, can an individual sue in respect of words which are defamatory of a body or class of persons generally?

The answer as a rule must be No! But the enquiry is really a wider one and is governed by no rule of thumb. The true question always is, was the individual or were the individuals bringing the action personally pointed to by the words complained of?

Many of the earlier cases appear to have been concerned with words alleged to refer not to a class but to one or more out of a larger number of persons without, it was said, sufficiently indicating who was aimed at. The authorities quoted in argument in *Le Fanu v. Malcolmson* (1848) 1 H.L.C. 637 were of this type though in that case itself the defamatory words complained of, whilst they appeared to apply to a class, in reality were capable of being shown and were shown to be applicable to some of the individuals comprising that class.

No doubt it is true to say that a class cannot be defamed as a class nor can an individual be defamed by a general reference to the class to which he belongs. Willis J.'s well known words in *Eastwood v. Holmes* (1858) 1 F. and F. 347 sufficiently illustrate the point. Nevertheless the words or the words combined with the surrounding circumstances may be shown to refer to some person or persons individually. *Le Fanu v. Malcolmson* (supra) has already been quoted and *Foxcroft v. Lacy* (1620) Hobart 89 is an earlier example to the same effect. In each case a number of persons were involved but they sued, jointly or severally, as individuals because their identity was sufficiently ascertained.

The question whether the words refer in fact to the Plaintiff or Plaintiffs is a matter for the jury or for a judge sitting as a judge of fact, but as a prior question it has always to be ascertained whether there is any evidence upon which a conclusion, that they do so refer, could reasonably be reached.

In deciding this question the size of the class, the generality of the charge and the extravagance of the accusation may all be elements to be taken into consideration. But none of them is conclusive. Each case must be considered

according to its own circumstances. I can imagine it being said that each member of a body, however large, was defamed where the libel consisted in the assertion that none of the members of a community was elected as a member unless he had committed a murder.

Whatever the Tribunal the first question is, are the words in conjunction with the relevant circumstances reasonably capable of being understood to apply to the Plaintiff.

In the present case that question must, I think, be answered in the negative.

It is true that the Plaintiff Appellant was and is a member of a body upon which very grave reflections have been cast, that he is the representative of that body in England, and that there are only 24 members of it in this country. But the newspaper article makes no reference to England; it confines itself to allegations about a minute body established in France and the United States. Minute no doubt its membership of 2,000 is when compared with the vast population of Russia, but in itself it forms a considerable body. Out of that body there was nothing to point to the Plaintiff, nor indeed to any individual in this country.

Nor do I think the Plaintiff's case is improved by the allegations of his friends that their minds turned to him when they read the article. Apart from the vagueness of the question, I can see no justification for an inference that he was the person aimed at. If it could be said, as it is conceded it could not, that each member of the body, wherever resident, could claim to be defamed, some

case might be made on behalf of the Plaintiff as one of its members, but as the evidence stands I see nothing to point to him in contradistinction to the rest. Indeed, inasmuch as he is a member of the English group he is the less likely to be referred to.

I agree that the appeal should be dismissed.

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