MONTSERRAT

IN THE COURT OF APPEAL

CIVIL APPEAL NO.2 of 1991

BETWEEN:

(1) THE MONTSERRAT REPORTER LIMITED
(2) THE MONTSERRAT PRINTERY LIMITED
(3) DAVID EDGECOMBE
(4) KENNY CASSELL

Appellants

and

MARGARET DYER HOWE

Respondent

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Honourable Mr. C.M. Dennis Byron - Justice of Appeal
The Honourable Dr. Nicholas J.O. Liverpool - Justice of Appeal

Appearances: Mr. G. Watt for the 1st, 3rd, and 4th Appellants
Miss E. Henry for the 2nd Appellant
Mr. L. Luckhoo Q.C. and Mr. J. Barzey for the Respondent

1993: April 27; 28; 29;
October 11.

JUDGMENT

BYRON J.A.

This is an appeal against a judgment of Redhead J. dated 21st July 1986 in which he ordered the appellants to pay the respondent $30,000 damages and costs for a libel contained in an article entitled "Towards a Bassie Dictatorship" published in an issue of the Montserrat Reporter dated 23rd May 1986. The Newspaper is owned and published by the No.1 appellant and printed by the No.2 appellant. The editor was the No.3 appellant and the article was written by the No.4 appellant. The respondent is a political figure, and was a Minister of Government and "Bassie" is a name by which the Chief Minister John Osborne was known. By the time the matter came on for hearing his Government had been defeated in general elections and the respondent had lost her seat.

The Grounds of Appeal

The grounds of appeal can be conveniently summarised as follows:

1. That the Judge's finding as to the meaning of the words complained of, was incorrect.
2. That some of the words complained of were incapable of being defamatory.

3. That no liability should attach to the appellants for words they attributed to rumour.

4. That the Judge's findings of fact were unjustified.

The appellant through counsel specifically told the court that there was no appeal against the amount of the damages, after it was pointed out to him that this was not one of his grounds of appeal.

The trial proceeded on the basis that the words complained of did refer to the respondent but that they were fair comment on a matter of public interest. The learned trial Judge found that on the evidence the appellants failed to justify their allegations of fact and did not prove that there was any foundation for the allegations made against the respondent and consequently the plea of fair comment failed entirely. In disposing of the argument that the courts must allow great latitude to criticism of politicians and other people in public life he relied on the observation of Cockburn J. in **Campbell v Spottiswoode (1863) 122 E.R. 288 at page 293** stated:

> "It is said that it is for the interest of society that the public conduct of public men should be criticised without any other limit than the writer should have an honest belief that what he writes is true. But it seems to me that the public have an equal interest in the maintenance of the public character of public men and public affairs could not be conducted by men of honour with a view to the welfare of the country, if we were to sanction allegations upon them made without foundation."

The Meaning of the Words

The title and gist of the article as a whole indicated that it was aimed at demonstrating that the Chief Minister, John Osborne, was trying to establish a dictatorship. The words complained of were contained in two paragraphs of a very lengthy article appearing in the Newspaper, and stated as follows:

> "But how can one man, elected by the people travel a course which no one agrees with? John Osborne has done some work on this. He has made sure that he has transformed his Ministerial colleagues into total puppets. He has made them into willing pawns in this wicked game of chess. He dominated them totally. We must remember that at least two of his three Ministers were integral parts of the plot to replace him. This was at the height of the Little Bay Scandals following the disclosures of Governor Dale. However he out manoeuvred them by obtaining a six month probation. He then got them to go on radio Montserrat and declare him innocent of any wrong doing. He got them to pledge unswerving dedication and loyalty to him publicly. In addition the widespread rumours that they are heavily indebted to him financially has broken their resolve and morale. The fact of the matter is, they cannot now afford to oppose him in any way. They need him and they need the tax payers' salary."
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> .....
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> "However, there are clear signals which one discerns from the Chief Minister's behaviour, particularly over the past three weeks. It is clear that he has embarked on a course to stifle political opposition at all costs. It is clear that our civil liberties and our human rights are in danger. It is evident that this kind of behaviour coming from the head of Government spells doom to our development and that his actions will make potential investors run away from Montserrat. John Osborne has embarked on a course

> which will make all development efforts futile and frustrate attempts to put our people to work. He has set out to make Montserrat independent and establish a dictatorship for his own benefit. Montserratans beware! Montserratans wake up! Do you want to be part of that Bassie Scheme."

The learned trial Judge found that the words in the article would have conveyed to the reasonable man that the plaintiff lacked integrity as a Minister, that she was a person of weak character totally dominated by the Chief Minister, and was only an instrument in his wicked political game; that she was dishonest because notwithstanding the fact that she was asking for his removal after the Governor had exposed his wrongdoing regarding the Little Bay Scandal she went on radio Montserrat where she stated that he was not guilty of any wrongdoing and pledged unswerving support when there was nothing to warrant her change of position; that being financially indebted to him and because of that she supports whatever he does as she cannot afford to oppose him; that she is not worthy to be a Minister because she allowed herself to be bought by the Chief Minister and cannot perform her duties as a Minister objectively because of her indebtedness to him, and his domination of her.

The appellants contended that it was incorrect to hold that the words bore the meaning that the plaintiff lacked integrity as a Minister, was of weak character, a dishonest person totally dominated by the Chief Minister and an instrument in his wicked political game. They also contended that the article did not bear the meaning that she was indebted to the Chief Minister and had allowed herself to be bought by him.

It has been long established that the meaning of the words complained of is to be determined by an objective test, that is the meaning in which the ordinary reasonable man would understand them, rather than the meaning intended by the man who published the words or the meaning he attached to them. [**Capital and Counties Bank v Henty** (1882) 7 App. Cas. at 745.]

In the words of Lord Morris in **Jones v Skelton** (1963) 1 W.L.R. 1370 at 1371:

> "The ordinary and natural meaning of words may be either the literal meaning or it may be implied or inferred or an indirect meaning; any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be part of the ordinary and natural meaning .... The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge, and not fettered by any strict legal rules of construction would draw from the words."

In his very careful and lengthy judgment, the learned trial Judge went through the article sentence by sentence. In my view he applied the appropriate objective test. It seems to me that on any reading of the article the words would convey to the reasonable man the meaning attributed to them by the learned Judge. I would therefore reject the grounds of appeal which challenged his finding as to the meaning of the words complained of.

Are the words capable of bearing a defamatory meaning?

It is well settled that the question whether words which are complained of are capable of conveying a defamatory meaning is a question of law and is therefore one calling for the decision of the Court. And if the words are so capable then it is a question for the jury whether the words do in fact convey a defamatory meaning. The legal test is that an imputation is defamatory if it tends to lower the plaintiff in the estimation of right thinking members of the society generally, or as the older authorities express it exposes him to hatred, ridicule or contempt.

Under this general heading the appellants have urged that the allegations:

(i) that the respondent was financially indebted to the Chief Minister and therefore could not oppose him, and

(ii) that she had allowed herself to be bought by the Chief Minister

were not libellous.

The issue would seem to me to be too obvious to require the support of authority. I do not think that the learned trial Judge's ruling that the imputation he attributed to words are defamatory can be criticised, and I would confirm the ruling that the words complained of are capable of bearing a defamatory meaning.

The Rumours

The appellant argued that the assertion of the plaintiff's indebtedness attributed as it was to "rumour", was not an allegation of fact but merely honest comment based on information the writer had gleaned from sections of the public, and no liability should attach to it or to the comments based on it.

I think that the law is already well established that it is no defence to defamation that one is merely repeating a rumour. (**Watkin v Hall** L.R. 3 Q.B. 396). Lord Hodson discussed the principle in **Lewis v Daily Telegraph Ltd** [1964] A.C. 234 at p.274 - 275, in these words:

> "It has been argued before your Lordships that suspicion cannot be justified without proof of actual guilt on the analogy of the rumour cases such as Watkin v Hall. Rumour and suspicion do, however, essentially differ from one another. To say something is rumoured to be the fact is, if the words are defamatory, a republication of the libel. One cannot defend an action for libel by saying that one has been told the libel by someone else, for this might be only to make the libel worse. The principle as stated by Blackburn J. in Watkin v Hall is that a party is not the less entitled to recover damages from a court of law for injurious matter published concerning him because another person previously published it. It is wholly different with suspicion. It may be defamatory to say that someone is suspected of an offence, but it does not carry with it that that person has committed the offence, for this must surely offend against the ideas of justice which reasonable persons are supposed to entertain. If one repeats a rumour one adds one's own authority to it and implies that it is well founded, that is to say, that it is true. It is otherwise when one says or implies that a person is under suspicion of guilt. This does not imply that he is in fact guilty but only that there are reasonable grounds for suspicion, which is a different matter."

The allegation of indebtedness in the article must therefore be regarded as an allegation of fact which is libellous unless justified. In my view the hardest blow to the reputation of the plaintiff is contained in this allegation that she was subverting her better judgment to the will of the Chief Minister because she was indebted to him, could not afford to oppose him, and had been bought by him.

I can do no better than quote from the learned trial Judge's refutation of this argument:

> "In **Hunt v Star Newspaper Company Ltd 1908 2 KB 304 at p 320**, Fletcher Moulton L.J. said:
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> "In the next place, in order to give room for fair comment, the facts must be truly stated. If the facts upon which the comment purports to be made do not exist, the foundation of the plea fails...This has been so frequently laid down authoritatively, that I do not need to dwell further upon it."
>
> In other words, one cannot invent fact and comment upon them or for that matter put forward wide rumours as facts and comment upon them and say the comment is fair comment. That is not the law. The facts must be justified."

With regard to this issue the appellants were unable to prove anything except that the rumour existed and that the allegation was a reasonable deduction based on the allegation that the Chief Minister said he would have spent $1,000,000.00 on the forthcoming election and on the assumption that no other reason could be found for the Chief Minister's domination of the respondent. On the other hand the Judge accepted the respondent's evidence that she was not indebted to the Chief Minister. She was married to a land surveyor who supported her financially from his income, in addition they had income from other sources such as rentals from a flat and a home, and pool tables. She did not need the tax payers money but was serving because of her interest in the community. The review of her career and of her reputation in the community (as revealed by the evidence) showed that she in no way deserved the characterisation which the report of the rumours and comments made thereon imputed to her. Even the 4th appellant admitted in evidence that he had once honestly written about her:

> "Annie Dyer was thought of as a person who would always be on the side of truth, honesty and high morality".

In my view the trial Judge was clearly justified in finding that the words complained of were defamatory and that the defence of fair comment could not apply to them because they were based on false factual foundation.

The Judge's Finding on the Facts

The appellants raised 3 main issues under this general heading:

1. That the learned trial Judge was wrong to conclude that there was a misunderstanding by the Governor and others of what the Chief Minister said in relation to the execution of the Government.
2. That the learned trial Judge was wrong to find that the respondent was not part of a plot to remove the Chief Minister from office.

3. That the learned trial Judge was wrong to reject the evidence of the appellant's witness John Wilson.

The evidence was that the Chief Minister John Osborne had got into political trouble over what was known as the Little Bay scandal which surfaced when the Governor circulated what was designated a secret memorandum to the members of Executive Council. The import of this memorandum was that Governor was reporting that the Chief Minister had sworn to an affidavit containing false information on a matter of great public concern:

> "There is an inaccuracy in the statement in that it says Executive Council approved the Rozah Agreement in principle and that Mr. Ismailie was advised that the agreement would be executed on the 4th October 1983. Executive Council Minutes do not record such decision."

Although full argument was addressed to the court on the question of the learned trial Judge's inference that there was "an unfortunate misinterpretation" of what Chief Minister Osborne had said in relation to the execution of the agreement, I find it unnecessary to express a view on this matter. The truth on this question is peripheral to the issues central to the determination of liability in this case.

The evidence clearly revealed that the allegation in the Governor's memorandum caused great consternation among the members of the Executive Council, the ruling PLM party and eventually the country at large. The matter escalated and despite compelling evidence, the Chief Minister persistently denied that he had signed the affidavit, even up to the time he gave evidence in court.

I should dispose of the point argued by the appellant that the learned trial Judge did not make any findings of fact as to whether the Chief Minister had sworn the affidavit. The evidence was very compelling on that point and the learned trial Judge considered the document as if he believed the Chief Minister had sworn to it. I think it is reasonable to conclude that despite his denials the Chief Minister had sworn to the document.

The matter became a national issue to the extent that from his own governing political party there was a call for his resignation. But he was able to weather the storm and when it was over David Brandt the elected member who had called for his removal from office had resigned and Ministers including the respondent went on National Radio and stated that the Government and party had determined that the accusations against him were inaccurate.

One of the major factual issues in the trial centered around the part that the respondent actually played. The justification for a large part of the contents of the article depended on the ability of the appellants to prove that the respondent felt that the Chief Minister's behaviour required his removal from office as Chief Minister in the interest of good government, and that

she had accepted the suggestion made by David Brandt that she should take over as Chief Minister, but subsequently and for no good reason abandoned her position and pledged support or the Chief Minister. The respondent however maintained that she researched the allegations, concluded that they were not serious and continued to support the Chief Minister.

The Plot

The other aspect of the learned trial Judge's finding on the facts which was challenged in this appeal was that learned trial Judged erred when he failed to find that respondent was an integral part of a plan to remove the Chief Minister from his position and to replace him with someone else, and rejected the evidence of John Wilson. This was a crucial part of the case because the appellants set out to prove that their contention of the respondent's domination by the Chief Minister was based on the fact that she, having come to the opinion that he was involved in wrongdoing in connection with the Little Bay Scandal, agreed that he should be removed as Chief Minister, and that she herself would accept the position as leader, and yet without any proper justification resiled from that position and publicly pledged her loyalty to him, falsely expressing the view that he was guilty of no wrongdoing.

The learned trial Judged found that these facts were not proven. The evidence he believed was that after the circulation of the Governor's memorandum, in July 1984 David Brandt an elected member, represented to the respondent that the Chief Minister was involved in wrongdoing, and suggested that she should go to Government House and look at the relevant documents to satisfy herself. About 2 days afterwards the respondent did go to Government House. She described her conclusions during her testimony in this way:

> "when I looked through all the documents I did not see any serious problem with regard to the Chief Minister's position. I saw nothing which I would have questioned how things were done."

Shortly after that Mr. Brandt caused a caucus meeting of all elected members of the ruling party to be summoned. The only direct evidence of the proceedings at that meeting came from the respondent and the Chief Minister. The Judge believed their evidence. They supported the testimony of each other that Mr. Brandt called for the resignation of the Chief Minister in the interest of good Government because of the Little Bay Scandal and proposed that the respondent be elected leader. But she declined to lead, pointed out that the party had no structure to deal with the problems that were being discussed and suggested that a structure should be put in place. Then the meeting was adjourned for a wider caucus of party members to discuss the matter.

Shortly after that meeting David Brandt sent a letter to the Chief Minister resigning from the party. That letter included a reference to the caucus meeting in these terms:

> "At that very meeting the Honourable Margaret Dyer and myself suggested to you that in the interest of good Government and the future of the Party, you should resign as we now have no confidence in your leadership."

A copy of this letter was sent to the plaintiff, but she took no steps to document any rebuttal of that sentence. The Judge commented by saying that although she ought to have clarified her position, her failure to do so is not conclusive evidence that she called for the resignation of the Chief Minister. He explained that he had resolved that it was reasonable to conclude that she did not, having regard to the fact that she did not find the case made out against him to be serious.

John Wilson's Evidence

John Wilson, who at that time was the Secretary of the party gave evidence that on the morning prior to the second caucus that he went to the respondent's home with David Brandt. He gave evidence of a conversation he had with Mr. Brandt which suggested that the respondent had called for the Chief Minister's removal at the earlier caucus. He said:

> ".....when I went there I found her already resolved to topple John Osborne. Brandt said he would support her for leadership."

But in her cross examination when this conversation was put to her she had said:

> "I deny that during the discussions I told Mr. Brandt and Mr. Wilson that I was fed up with the Chief Minister and as far as I was concerned he must resign."

The Judge did not believe John Wilson on this issue and his reasons included the evidence of subsequent events because he found that the plaintiff stood firm in her resolve that the Chief Minister should not be replaced. I was impressed by the fact that at that time Mr. Brandt had already resigned from the party and did not attend the second caucus, so that the offer to support her for the leadership which Mr. Wilson alleged he made seems incredible.

Mr. Wilson attended the second caucus and the Judge had his testimony as well as that of the respondent and the Chief Minister to consider. Mr Wilson's testimony included allegations that at that meeting the respondent stated that the Chief Minister should resign but eventually changed her mind.

The appellants tendered in evidence a letter that Mr. Wilson wrote to Mr. John Kelsick the party Chairman after the second caucus complaining that he was ostracised from the party because of views he had expressed at the second caucus meeting which were no different from those expressed by others who were there.

That letter included the paragraph:

> "Minister Dyer repeated a previous position taken on Thursday 26th. The party was in difficulty now all because the Chief Minister had lied to us on all important matters including the Dominelli and the Little Bay Affair. Minister Dyer stated that it was her opinion that Mr. Osborne should resign the leadership. Later, however, the Minister changed her position, but maintained that she was not satisfied."

The learned trial Judge found that there was no evidence that the respondent had received this letter so he could attach no weight to the fact that she had not responded to that statement. The learned trial Judge considered the question of whose testimony he should believe and decided to accept the testimony of the respondent and reject that of John Wilson. It is not surprising that he rejected John Wilson's testimony in view of the many inconsistencies therein, for example in his evidence in chief at the trial John Wilson said:

> "Minister Dyer said that she had nothing to say on the matter. She made a decision this morning and that is what she stood by. She did not say at that time what she stood by. She did not say at that time what was the position she had taken."

but during his cross-examination he said that the respondent was the prime mover of the plot to remove the Chief Minister.

The Judge believed that at the second caucus John Wilson urged that the Chief Minister should be replaced but that everyone else agreed that the matter complained of was not sufficiently serious to warrant his dismissal, although they reprimanded him for not involving his caucus members or informing the members of Executive Council prior to the signing of the agreement. The learned trial Judge also accepted the evidence that everyone, except Wilson, agreed, that the Ministers should make public statements of their view that the allegations against the Chief Minister were inaccurate. He found that the radio broadcasts were made as a result of the decision of the party caucus and that it was "not correct to say that John Osborne got them to go on Radio Montserrat and declare him innocent of any wrongdoing".

The learned trial Judge also believed that the respondent was approached by a number of people who encouraged her to leave the governing party and offered her the leadership of the NDP an opposition party. The learned trial Judge believed that she refused all these offers. Four of the people who the Judge found approached her namely - John Wilson, Kenneth Cassell, who wrote the article, David Edgecombe the editor of the newspaper and Bennet Roach gave evidence for the defendants at the trial.

The learned trial Judge also found that after her refusal to leave the party, articles were written in the Montserrat Reporter about the respondent implying that she was unfit for public office. An article dated 24th May 1985 written by Mr. Cassell and appearing in the appellant's paper was exhibited at the trial. It carried the following remarks about the respondent:

> ".....no one would have expected her to compromise her conscience or to tarnish her integrity by subscribing to dubious policies or upholding untenable positions. Annie had a good image."

The Judge concluded:

> "Inspite of all the pressures which were brought to bear upon the plaintiff she refused to leave her party. What is more, if she had left her party the John Osborne's Government would have fallen. The plaintiff was resolute in her support of John Osborne. I therefore come to the conclusion that at the caucus meetings, the plaintiff did not call for the resignation of the Chief Minister. The defendants have therefore failed

to prove that the plaintiff was part of a plot to replace the Chief Minister. She was not even part of the move to replace him."

In my view there was ample evidence to support the findings of fact which the learned trial Judge made on the issue of the plot, and there was an adequate basis for the findings on the credibility of the witnesses on that issue.

It has been long recognised that when a Court of Appeal has to consider whether the facts found by a trial Judge are true, or his impressions of the credibility of a witness are to be relied upon the Court of Appeal is at a disadvantage. It does not hear the witnesses nor see them. It merely reads the evidence and re-hears counsel. This is contrasted with the Judge who had an opportunity though the whole process of the evidence to gradually imbibe an impression of the personality of the witnesses and of their trustworthiness and of the accuracy of their observations and memory or the reverse. (See Powell v Streatham Manor Nursing Home (1935) All E.R. p.58).

In **Benmax v Austin Motor Co. Ltd** [1955] 1 All E.R. 329 at 328 Lord Reid said:

"But the trial Judge has seen and heard the witnesses, whereas the appeal court is denied that advantage and only has before it a written transcript of their evidence. No one would seek to minimise the advantage enjoyed by the trial judge in determining any question whether a witness is, or is not, trying to tell what he believes to be the truth, and it is only in rare cases that an appeal court could be satisfied that the trial judge has reached a wrong decision about the credibility of a witness. But the advantage of seeing and hearing a witness goes beyond that. The trial judge may be led to a conclusion about the reliability of a witness's memory or his powers of observation by material not available to an appeal court. Evidence may read well in print but may be rightly discounted by the trial judge or, on the other hand, he may rightly attach importance to evidence which reads badly in print. Of course, the weight of the other evidence may be such as to show that the judge must have formed a wrong impression, but an appeal court is, and should be, slow to reverse any finding which appears to be based on any such considerations."

I can find no basis to disturb the learned trial judge's findings of fact in general or on credibility in particular; or in his application of the law to the facts of this case.

For these reasons I would dismiss the appeal with costs to the respondent.

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DENNIS BYRON
Justice of Appeal

I concur.

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SIR VINCENT FLOISSAC
Chief Justice

I concur.

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DR. NICHOLAS LIVERPOOL
Justice of Appeal