[ZEKIA, P., VASSILIADES AND JOSEPHIDES, JJ.]

SYNOMOSPONDIA ERGATON KYPROU AND OTHERS,

Appellants-Plaintiffs

v.

CYPRUS ASBESTOS MINES LTD., AND ANOTHER,

Respondents-Defendants.

(*Civil Appeal Nos.* 4474–4475)
(*Consolidated*)

Libel—Privilege—Qualified or conditional privilege—Malice or lack of "good faith"—Reciprocity of interest—Extent of publication—Civil Wrongs Law, Cap. 148, *section* 21—*Damages—Trade Union—Damage to reputation—Civil Wrongs Law, Cap.* 148, *section* 2 (2).

Libel—Fair Comment—Matters of public interest—Malice or lack of "good faith"—Civil Wrongs Law, Cap. 148, *section* 19 (*a*).

The respondents-defendants, addressed to the Minister of Labour a letter in English dated the 20th June, 1960, and sent copies to H.B. Archbishop Makarios, President of the Republic, the Directors of Cyprus Asbestos Mines Ltd., the Inspector of Mines, the Cyprus Employers' Consultative Association, and other mines in the Island. On the same day a Greek version of the aforesaid letter which was substantially a true translation of the English version was circulated among the labourers at Amiandos and left at the Trade Union premises there and it was also posted up on a notice board outside a coffeeshop, outside a barber's shop and the village Post Office where anybody passing along the main road could have read it. It was in evidence that the circulation and posting of the leaflets and notices was the usual and normal way in which defendants communicated information to their labourers.

The plaintiffs alleged that the letter was defamatory of them and they sued the defendants claiming £20,000 damages for libel.

The defendants by their defence denied publication and pleaded that the matter complained of was not defamatory. They further put forward in the alternative a plea of qualified privilege or fair comment. Although the question of publication was originally denied and it was strongly contested at the hearing, after evidence was heard on the point the respondents admitted publication.

The trial Court found that the publication was made on a privileged occasion and that there was no evidence of malice to defeat it and dismissed plaintiffs' claim.

The plaintiffs appealed on two main grounds, that is, that the findings of fact are not supported by the evidence, and that the trial Court misdirected itself in finding that malice had not been proved.

The Court of Appeal sub-divided the letter in question into four parts and named them Part " A ", " B ", " C " and "D " respectively, for easy reference.

Held, (I) on whether the words complained of were capable of the meanings alleged or of a meaning that was defamatory of the plaintiffs or any of them, and, if yes, whether they were in fact defamatory :

The trial Court found that Part " A " of the leaflet was capable of and was understood to imply that the plaintiffs were prepared to bring about a strike at all costs or without sufficient reason ; and the Court was further of the view that such behaviour involved moral obliquity and improper motives on the part of the plaintiffs and was, therefore, capable of a defamatory meaning. The trial Court did not make a finding as to whether Part " A " was actually defamatory of the plaintiffs or any of them and we think that this is an omission on their part. On the evidence on the record we have no hesitation in coming to the conclusion that Part " A " of the leaflet was defamatory of all four plaintiffs.

(II) as regards the defence of conditional privilege :

(1) As regards the publication of the letter to the Minister of Labour and to the other authorities and bodies stated in the letter itself, it is not in dispute that the defendants had a moral duty to publish it to them. With regard to the publication of the leaflet to the labourers and the Trade Union officials the trial Court found that there was reciprocity of interest and, we think, that they rightly did so.

(2) We have, however, to consider the provisions of the proviso to section 21 (1) (*a*). to the effect that the publication must " not exceed either in extent or matter what is reasonably sufficient for the occasion ".

(3) We are of the view that the posting up of the leaflet at the coffeeshop, the barber's shop and the Post Office was unnecessary for the occasion and that the publication exceeded

in extent what was reasonably sufficient for the occasion. With regard to the " matter " of the publication this will be considered in relation with the question of good faith.

(4) The trial Court rightly found that the publication in question was for the protection of the defendants' interests.

(III) on whether the plaintiffs have succeeded in establishing the lack of good faith of the defendants :

(1) *As regards PART " A " :* The statement that the fourth plaintiff enjoyed free quarters in Amiandos is untrue and was published by the defendants without having taken reasonable care to ascertain whether it was true or false. This proves malice of the defendants within the provisions of section 21 (2) (*b*) of the Civil Wrongs Law.

The reported conversation on the telephone between the second and fourth plaintiffs is true. However, we are of the view that the defendants in publishing the words which followed, that is to say, " from the above we get the impression that a conspiracy is taking place against the Asbestos Mines and that the Union wants by all means to call a strike ", acted with intent to injure the plaintiffs in substantially greater degree or substantially otherwise than was reasonably necessary for the protection of the defendants' rights or interests in respect of which they claim to be privileged, and this proves malice under section 21 (2) (*c*) of the Law in respect of all plaintiffs.

(2) *As regards PART " B " :* This concerns the slanderous attacks on defendants which are untrue and allegations to the contrary have not been substantiated by the plaintiffs. Consequently the plaintiffs have failed to prove malice in respect of this Part.

(3) *As regards PART " C " :* The allegation that the second plaintiff was discharged from the service of the defendant company, due to negligence is untrue and was published by the defendants without having taken reasonable care to ascertain whether it was true or false. This comes within the provisions of section 21 (2) (*b*). The statement that the defendant company is still supporting the wife and son of the second plaintiff is substantially true but the defendants in publishing this acted with intent to injure the second plaintiff in a substantially greater degree or substantially otherwise than was reasonably necessary for the protection of the defendants' private rights or interests. And this amounts to malice under

the provisions of section 21 (2) (*c*). Likewise, the accusation that the continuous intimidation and attempt to hamper the development of the Asbestos Mines is either a planned anti-foreign campaign on the part of the Trade Union or a personal ambition of the second plaintiff, proves malice under section 21 (2) (*c*) of the Law, in respect of the plaintiffs and, particularly, of the second plaintiff.

For these reasons we are of the view that the plaintiffs have proved lack of good faith by the defendants and the defence of qualified privilege accordingly fails.

(*IV*) *on the defence of fair comment, under section* 19 (*a*) *of the Civil Wrongs Law, Cap*, 148 :

(1) In the present case we entertain considerable doubts whether the matters published by the defendants are matters of public interest. But, having regard to the view which we take with regard to malice (to be stated below), it is not necessary for the purposes of this case to decide this point, and we accordingly leave it open.

(2) We take this view because, even if the defendants succeed in establishing that the publication is a matter of public interest, their defence of fair comment cannot succeed for the reason that the plaintiffs have proved that the publication was not made in good faith within the meaning of sub-section (2) of section 21 of the Law. This is the same point which we decided earlier in this judgment in connection with the defendants' plea of qualified privilege. The defence, therefore, of fair comment also fails and the plaintiffs are, consequently, entitled to damages.

(*V*) *as regards damages* :

Having taken all the facts and circumstances into consideration we assess the damages as follows : For the second plaintiff £200 ; for the first, third and fourth plaintiffs £100 each.

With regard to costs we make the following order :

The defendants to pay—

(*a*) the plaintiffs' costs for one advocate in the District Court on the amount recovered by all plaintiffs, *i.e.* £500 ;

(*b*) the costs of plaintiffs Nos 1, 3 and 4 in this Court for one advocate on the same scale : and

(*c*) the costs of the second plaintiff's advocate in this Court on the amount recovered by this plaintiff.

In the result the appeal is allowed, the judgment of the District Court is set aside and judgment entered for the plaintiffs in the above terms.

Appeal allowed. Judgment of the District Court set aside. Judgment entered for the plaintiffs in the above terms. Order as to costs as aforesaid.

Cases referred to :

Edmonson v. *Birch & Co. Ltd.* (1907) 1 K.B. 371 ; (1904–7) All E.R. Rep. 996.

Appeal.

Appeal against the judgment of the District Court of Nicosia (Loizou, P.D.C. & Ioannides, D.J.) dated the 23.9.63 (Action No. 2845/60) whereby plaintiffs' claim for £20,000 for libel contained in a leaflet was dismissed.

Cur. adv. vult.

C. Phanos, for appellants Nos. 1, 3 and 4.

L. Clerides, with *A. Arghyrides*, for appellant No. 2.

M. Houry with *St. G. McBride*, for the respondents.

ZEKIA, P.: The judgment of the Court will be delivered by Mr. Justice Josephides.

JOSEPHIDES, J.: In this case the plaintiffs claimed £20,000 damages against the defendants for libel. The trial Court found that the publication was made on a privileged occasion and that there was no evidence of malice to defeat it, and dismissed that plaintiffs' claim. The plaintiffs now appeal on two main grounds, that is, that the findings of fact are not supported by the evidence, and that the trial Court misdirected itself in finding that malice had not been proved.

The first appellant (first plaintiff) is a registered Trade Union Confederation and is known by its Greek initials as " S.E.K.". The second appellant (second plaintiff) was at all material times the general organizer of the first appellant. The third appellant (third plaintiff) is one of the seven labour centres of the first appellant and the local

Trade Union of Amiandos village and is registered under the Trade Unions Law. The fourth appellant (fourth plaintiff) was at all material times an official of the third appellant.

The first respondent (first defendant) is an asbestos mining company at the village of Amiandos, and the second respondent (second defendant) a director of the first respondent and the manager of the mines at Amiandos.

It is common ground that in June, 1960, there was a trade dispute between the first respondent and the labourers of the first appellant and that on Monday the 13th June, 1960, a meeting was to take place in connection with certain demands submitted by the Unions. Negotiations had been going on for months.

The trial Court found as a fact—and this finding is amply supported by the evidence—that the following telephone conversation took place between the second and the fourth appellants on the evening of the 9th June, 1960 :

" Panayiotis (appellant No. 4) : We shall submit our demands on Monday."

" Polydefkis (appellant No. 2) : Do not give in on any points and if the Manager of the Mines asks for some days to consider the demands do not agree but prepare yourself for a strike."

" Panayiotis : Do not worry we are all set for a strike."

Following this telephone conversation the respondent company, through its manager, the second respondent, addressed to the Minister of Labour the following letter in English dated the 10th June, 1960, and sent copies to H.B. Archbishop Makarios, President of the Republic, the Directors of Cyprus Asbestos Mines, Ltd., the Inspector of Mines, the Cyprus Employers' Consultative Association, and other mines in the Island :

" The Honourable Minister of Labour,
NICOSIA.

PART "A"

Sir,

It has come to our knowledge that a conversation took place on the 9th instant between Polydefkis Rubinas of SEK Nicosia and the local SEK representative in Amiandos Panayiotis Aristidou who is at present enjoying free quarters in Amiandos.

In the course of the conversation approximately the following was said :

'Pananyiotis : We shall submit our demands on Monday.'

'Polydefkis : Do not give in on any points and if the Manager of the Mines asks for some days to consider the demands do not agree but prepare yourself for a strike.'

'Panayiotis : Do not worry we are all set for a strike.'

From the above we get the impression that a conspiracy is taking place against the Asbestos Mines and that the Union wants by all means to call a strike.

PART "B"

We would like to call the Minister's attention to the fact that the Management of the Asbestos Mines has during the last couple of years repeatedly been slanderously attacked and insulted in the Press by SEK, although the working conditions for the labourers of our Mine are fully as good as anywhere else in the island.

PART "C"

We do not know whether this continuous intimidation and attempt to hamper the development of the Asbestos Mines is a planned anti-foreign campaign on the part of the Trade Union in which case the whole future policy of this Company will have to be revised or whether it is a personal ambition of Polydefkis Rubinas who is apparently secretary of the Miners division of SEK. He was discharged from the Asbestos Mines due to negligence and may therefore have a personal grudge against the Company although the Company is still supporting his wife and son by charity.

PART "D"

Whatever the reason for these continuous and damaging attacks against our Company, we take a very serious view of the present situation. The working days during the year are limited to the summer season as the production of the Asbestos Mines depends entirely in dry weather and even if it may give the Trade Union leaders a satisfaction to call still another strike we fail to see what benefit the population of Cyprus can achieve by the ever increasing number of crippling strikes which the island is at present experiencing, especially when directed against the mining industries who are amongst the main contributors to the inflow of foreign currency.

We hereby request the Minister of Labour to take the necessary action to prevent provocative attacks against our Company so that we can get on with our work and developments peacefully and be treated in a civilized manner.

Yours faithfully,

THE CYPRUS ASBESTOS MINES LIMITED

H. Marcher."

" Copy to : Archbishop Makarios,
The Directors of Cyprus Asbestos Mines Ltd.,
Inspector of Mines,
Cyprus Employers' Consultative Association,
Other Mines in the Island."

We have subdivided the above letter into four parts and marked them Part A, B, C and D, respectively, for ease of reference, but this sub-division does not appear in the original.

On the same day a Greek version of the aforesaid letter was circulated among the labourers at Amiandos and left at the Trade Union premises there and it was also posted up on a notice board outside a coffeeshop, outside a barber's shop and the village Post Office where anybody passing along the main road could have read it. It was in evidence that the circulation and posting of the leaflets and notices was the usual and normal way in which defendants communicated information to their labourers. The Greek version of the letter which was circulated in this way is substantially a true translation of the English version and reads as follows :

« ΜΕΤΑΦΡΑΣΙΣ

ΚΥΠΡΙΑΚΑ ΑΜΙΑΝΤΩΡΥΧΕΙΑ ΛΤΔ.,
ΑΜΙΑΝΤΟΣ.

10.6.1960.

Ἔντιμον κ. Ὑπουργὸν Ἐργασίας,
ΛΕΥΚΩΣΙΑ.

Κύριε,

Περιῆλθεν εἰς γνῶσιν μας ὅτι ἔλαβε χώραν μία συνομιλία μεταξὺ Πολυδεύκη Ρουπίνα τῆς ΣΕΚ, Λευκωσία, καὶ τοῦ τοπικοῦ ἀντιπροσώπου τῆς ΣΕΚ εἰς Ἀμίαντον, Παναγιώτη Ἀριστείδου, ὁ ὁποῖος ἐπὶ τοῦ παρόντος ἀπολαύη δωρεὰν κατοικίαν εἰς τὸν Ἀμίαντον.

Εἰς τὴν συνομιλίαν ἐλέχθησαν περίπου τὰ ἀκόλουθα:

'Παναγιώτης: Θὰ ὑποβάλωμεν τὰ αἰτήματά μας τὴν Δευτέραν.'

'Πολυδεύκης: Νὰ μὴν ὑποχωρήσετε σὲ κανένα σημεῖον καὶ ἐὰν ὁ Διευθυντὴς τοῦ Μεταλλείου ζητήσῃ μερικὲς μέρες διὰ νὰ μελετήσῃ τὰ αἰτήματα μὴ δεχθῆτε ἀλλὰ ἑτοιμασθῆτε γιὰ ἀπεργίαν.'

'Παναγιώτης: Μὴν ἔχεις ἔννοιαν εἴμεθα ὅλοι ἕτοιμοι γιὰ ἀπεργίαν.'

'Απὸ τὰ ἀνωτέρω ἔχομεν τὴν ἐντύπωσιν ὅτι λαμβάνει χώραν μία συνωμοσία ἐναντίον τῶν 'Αμιαντωρυχείων καὶ ὅτι ἡ Συντεχνία θέλει ὁπωσδήποτε νὰ κάμῃ ἀπεργίαν.

Θὰ ἠθέλαμεν νὰ ἐφιστήσωμεν τὴν προσοχὴν τοῦ 'Υπουργοῦ εἰς τὸ γεγονὸς ὅτι ἡ Διεύθυνσις τῶν 'Αμιαντωρυχείων εἶχεν, κατὰ τὴν διάρκειαν τῶν τελευταίων δύο ἐτῶν, ἐπανειλημμένες συκοφαντικὲς ἐπιθέσεις καὶ ὕβρεις μέσον τοῦ Τύπου ὑπὸ τῆς ΣΕΚ, ἄνκαι οἱ ὅροι ἐργασίας τῶν ἐργατῶν τοῦ Μεταλλείου μας εἶναι καθ' ὁλοκληρίαν τόσον καλοὶ ὅσον καὶ ἀλλαχοῦ τῆς νήσου.

Δὲν γνωρίζομεν ἐὰν αὐτὸς ὁ ἐξακολουθητικὸς ὑπαινιγμὸς καὶ προσπάθεια παρεμποδίσεως τῆς ἀναπτύξεως τῶν 'Αμιαντωρυχείων εἶναι μία σχεδιασμένη ἐκστρατεία ἐναντίον τῶν ξένων ἐκ μέρους τῆς Συντεχνίας, ποὺ εἰς τὴν περίπτωσιν αὐτὴν ἡ ὅλη πολιτικὴ τῆς 'Εταιρείας αὐτῆς θὰ πρέπῃ νὰ ἀναθεωρηθῇ εἴτε ἐὰν εἶναι μία προσωπικὴ φιλοδοξία τοῦ Πολυδεύκη Ρουπίνα ὁ ὁποῖος εἶναι προφανῶς γραμματεὺς τῶν Μεταλλωρύχων τοῦ τμήματος τῆς ΣΕΚ. Αὐτὸς ἀπελύθη ἀπὸ τὰ 'Αμιαντωρυχεῖα ἕνεκεν ἀμελείας καὶ ὡς ἐκ τούτου πιθανὸν νὰ ἔχῃ προσωπικὴν μνησικακίαν ἐναντίον τῆς 'Εταιρείας, ἄνκαι ἡ 'Εταιρεία ἀπὸ εὐσπλαχνίαν ὑποστηρίζει ἀκόμη τὴν γυναῖκα του καὶ τὸν υἱόν του.

'Οποιαδήποτε καὶ ἂν εἶναι ἡ αἰτία διὰ τὶς ἐξακολουθητικὲς καὶ βλαβερὲς αὐτὲς ἐπιθέσεις ἐναντίον τῆς 'Εταιρείας, λαμβάνομεν πολὺ σοβαρὰ ὑπ' ὄψιν τὴν παροῦσαν κατάστασιν. Αἱ ἐργάσιμες ἡμέρες τοῦ ἔτους εἶναι μόνον ἐκεῖνες τοῦ καλοκαιριοῦ καθ' ὅσον ἡ παραγωγὴ τῶν 'Αμιαντωρυχείων ἐξαρτᾶται ἀποκλειστικῶς ἀπὸ τὸν ξηρὸν καιρὸν καὶ ἂν ἀκόμη θὰ μποροῦσε νὰ εὐχαριστήσῃ τοὺς ἀρχηγοὺς τῆς Συντεχνίας τὸ νὰ κηρύξουν ἀκόμη μίαν ἀπεργίαν, δὲν δυνάμεθα νὰ ἐννοήσωμεν τί θὰ ἔχῃ νὰ ὠφεληθῇ ὁ πληθυσμὸς τῆς Κύπρου ἀπὸ τὸν ἐξακολουθητικὰ αὐξανόμενον ἀριθμὸν ἐπιζημίων ἀπεργιῶν τὰς ὁποίας ἀντιμετωπίζει τώρα ἡ Νῆσος, προπάντων ὅταν αὐταὶ στρέφονται ἐναντίον τῶν μεταλλευτικῶν ἐπιχειρήσεων οἱ ὁποῖες εἶναι ἐξ ἐκείνων τῶν κυρίων συντελεστῶν διὰ τὴν εἰσροὴν ξένου συναλλάγματος.

Διὰ τοῦ παρόντος παρακαλοῦμεν τὸν 'Υπουργὸν 'Εργασίας νὰ πάρῃ τὰ ἀναγκαῖα μέτρα διὰ νὰ ἐμποδίσῃ προκλητικὲς ἐπιθέσεις ἐναντίον τῆς 'Εταιρείας μας οὕτως ὥστε νὰ μπορέσωμεν νὰ προχωρήσωμεν εἰς τὴν ἐργασίαν μας καὶ τὰς βελτιώσεις εἰρηνικά, καὶ νὰ μᾶς μεταχειρίζωνται μὲ ἕνα πολιτισμένο τρόπο.

Μετὰ τιμῆς,
ΚΥΠΡΙΑΚΑ ΑΜΙΑΝΤΩΡΥΧΕΙΑ ΛΙΜΙΤΕΔ
Χ. ΜΑΡΧΕΡ.»

«'Αντίγραφα ἐστάλησαν:

'Αρχιεπίσκοπον Μακάριον,
Διευθυντὰς Κυπριακῶν 'Αμιαντωρυχείων Λτδ.,
'Επιθεωρητὴν Μεταλλείων,
Συμβουλευτικὸν Σύλλογον Κυπρίων 'Εργοδοτῶν,
Εἰς ἄλλα Μεταλλεῖα τῆς Νήσου.»

The respondents by their statement of defence denied publication and pleaded that the matter complained of was not defamatory. They further put forward in the alternative a plea of qualified privilege or fair comment.

Although the question of publication was originally denied and it was strongly contested at the hearing, after evidence was heard on the point the respondents admitted publication.

It was the case of the respondent company that it contributes a fair share to the economy of Cyprus operating seasonally, mainly in the summer months, and that any strike in that period would bring about bad results. With the intention of averting a strike the company circulated the said leaflet in order to inform Trade Union members. Negotiations had been going on for months and after the second respondent had overheard the conversation on the telephone on the 9th June, 1960, he formed the impression that the appellants were intent on declaring a strike at all costs, and that this strike would be against the interests of both parties and the interests of the island as a whole.

The first question which the trial Court had to determine was whether the words complained of were capable of the meanings alleged or of a meaning that was defamatory of the plaintiffs or any of them, and, if yes, whether they were in fact defamatory.

After reviewing the evidence, the trial Court found that Part " A " of the leaflet was capable of and was understood to imply that the plaintiffs were prepared to bring about a strike at all costs or without sufficient reason ; and the Court was further of the view that such behaviour involved moral

obliquity and improper motives on the part of the plaintiffs and was, therefore, capable of a defamatory meaning. The trial Court did not make a finding as to whether Part " A " was actually defamatory of the plaintiffs or any of them and we think that this is an omission on their part. On the evidence on the record we have no hesitation in coming to the conclusion that Part " A " of the leaflet was defamatory of all four plaintiffs.

The trial Court further found that Part " B " was defamatory of the first plaintiff in view of the use of the words " has.................. repeatedly been slanderously attacked and insulted ".

Finally, the Court found that Part " C " of the leaflet was defamatory of the plaintiffs and, particularly, of the second plaintiff and that it would be so understood by reasonable persons reading it.

The defence of qualified privilege was based on two grounds—

(*a*) common interest in the matter between the defendants and the persons to whom publication was made ; and

(*b*) that the publication was for the protection of the rights and interests of the defendants.

The law on the question of conditional privilege, as it is called in Cyprus, is conveniently summarised in section 21 of our Civil Wrongs Law, Cap. 148, which reproduces substantially the Common Law on the point. The publication of defamatory matter is privileged, on condition that it is published in good faith in, *inter alia,* the following case (section 21 (1) (*a*)) :

" (*a*) if the relation between the parties by and to whom the publication is made is such that the person publishing the matter is under a legal, moral or social duty to publish it to the person to whom the publication is made and the last mentioned person has a corresponding interest in receiving it or the person publishing the matter has a legitimate personal interest to be protected and the person to whom the publication is made is under a corresponding legal, moral or social duty to protect that interest ;

Provided that the publication does not exceed either in extent or matter what is reasonably sufficient for the occasion ;"

The onus of proving lack of good faith is, under the provisions of sub-section (3) of section 21, upon the plaintiff. The provisions with regard to lack of "good faith" or "malice" as it is known in the Common Law, are contained in sub-section (2) of section 21 which reads as follows :

> "(2) The publication of defamatory matter shall not be deemed to have been made in good faith by a person, within the meaning of sub-section (1) of this section, if it is made to appear either—
>
> (*a*) that the matter was untrue, and that he did not believe it to be true ; or
>
> (*b*) that the matter was untrue, and that he published it without having taken reasonable care to ascertain whether it was true or false ; or
>
> (*c*) that, in publishing the matter, he acted with intent to injure the person defamed in a substantially greater degree or substantially otherwise than was reasonably necessary for the interest of the public or for the protection of the private right or interest in respect of which he claims to be privileged."

As regards the publication of the letter to the Minister of Labour and to the other authorities and bodies stated in the letter itself, it is not in dispute that the defendants had a moral duty to publish it to them. With regard to the publication of the leaflet to the labourers and the Trade Union officials the trial Court found that there was reciprocity of interest and, we think, that they rightly did so.

We have, however, to consider the provisions of the proviso to section 21 (1) (*a*), to the effect that the publication must "not exceed either in extent or matter what is reasonably sufficient for the occasion".

It will be recalled that the leaflet was not only circulated to the Amiandos labourers and the Trade Union Officials, but it was also posted up outside a coffeeshop, a barber's shop and the village Post Office on the main Nicosia-Troodos road. The trial Court, after quoting the following extract from the case of *Edmondson* v. *Birch* & *Co. Ltd.* (1907 1 K.B. 371 ; (1904–7) All E.R. Rep. 996, came to the conclusion that "the extent and manner of the publication were necessary and the usual and normal methods employed by the defendants and that they did not go beyond the exigency of the occasion" ;

" That being the state of the authorities, it seems to me clear that *Pullman* v. *Hill & Co.* does not govern the case now before us. That case and *Boxsius* v. *Goblet Fréres* decide that where there is a duty, whether of perfect or imperfect obligation, existing between two persons and the occasion is privileged, the person entitled to the privilege is justified in using all reasonable means of availing himself of the privilege, and those reasonable means may include the employment of third persons if they are employed in the reasonable and ordinary course of business. Whether the duty to make the communication be one of perfect or imperfect obligation, it seems to me that the occasion is privileged provided that it is made use of in a reasonable and ordinary manner. I will only refer to one of the earlier authorities. In *Lawless* v. *Anglo-Egyptian Co.* a resolution was passed at a general meeting of the company that the directors' report which was submitted to the meeting and contained a statement by the auditors as to the mode in which the plaintiff, who was the manager of the company, kept his accounts should be printed and circulated among the shareholders. This resolution involved a communication of the auditors' statement to the printers and persons outside the company, but the court held that such a communication was protected by the privilege of the occasion, because it was part of the ordinary and reasonable manner of carrying out the circulation of the report among the shareholders.

" That seems to me to be an express decision upon the very point involved in the present case. The use of reasonable and ordinary methods for giving effect to the privilege does not destroy the privilege ". (Per Sir Richard Henn Collins, M.R. at page 1000 of the All E.R. report).

With great respect we beg to differ from the conclusion of the trial Court on this point. What was really decided in the *Edmondson* case is summarised in three lines in the judgment of Fletcher Moulton, L.J. as follows :

> " I think that the rule of law applicable to this case may be said thus : If the occasion for conducting a business correspondence is privileged, the privilege extends to and includes all the incidents of the transmission and treatment of that correspondence in the ordinary and reasonable course of business."

We are of the view that the posting up of the leaflet at the coffeeshop, the barber's shop and the Post Office was unnecessary for the occasion and that the publication

exceeded in extent what was reasonably sufficient for the occasion. With regard to the " matter " of the publication this will be considered in relation with the question of good faith.

With regard to ground " b " of the defendants' plea of qualified privilege, the trial Court found that the defendants had a legitimate interest both in the strike not taking place and for official intervention with a view to smoothing down their differences with the Unions, and for the unimpeded progress of their business. In the circumstances the trial Court rightly found that the publication in question was for the protection of the defendants' interests.

In considering the question of lack of good faith or malice it is necessary to consider certain facts connected with the case and mentioned in the publication complained of :

(*a*) *Telephone Conversation :*

The substance of the telephone conversation on the evening of the 9th June, 1960, between the second and fourth plaintiffs stated in Part " A " of the leaflet, was strenuously denied by both of them. But the trial Court, after hearing evidence, found as a fact that this conversation did actually take place and we are of the view that this finding is amply supported by the evidence.

(*b*) *Free quarters of plaintiff* 4 *:*

The allegation in the first paragraph of the leaflet that the fourth plaintiff was enjoying at the time free quarters at Amiandos was proved to be untrue, and on the evidence on the record we have no hesitation in holding that the defendants published this without having taken reasonable care to ascertain whether it was true or false because the building concerned was their own property.

(*c*) *Slanderous attacks on defendants :*

The trial Court found that the second plaintiff in his then capacity as deputy general secretary of the first plaintiff, published in the labour newspaper " Ergatiki Phoni " of the 3rd April, 1959, an article containing statements defamatory of the defendants. The trial Court further found that the suggestion made in that article that the first defendants had changed their name for the purpose of avoiding income tax in England could convey to the ordinary person and, therefore, to most people, a suggestion of fraudulent or dishonest practice. The same publication further contained the imputation that the defendants

refused to re-employ persons because they had taken part in the liberation struggle of Cyprus, which is a libel of a very serious nature. The plaintiffs sought to substantiate these statements but the trial Court found as a fact that they failed to do so, and all the findings of the Court are warranted by the evidence.

(d) Discharge of the second plaintiff from his employment :

The allegation is made in Part " C " of the leaflet that the second plaintiff was discharged from the Asbestos Mines " due to negligence " and that he may, therefore, have a personal grudge against the Company. It was the defendants' case that the second plaintiff was dismissed from their service, while the latter maintained that he resigned his appointment on the 15th January, 1958. The trial Court, after reviewing the oral and documentary evidence, found as a fact that the second plaintiff was " forced to resign from the company which we take to amount to a dismissal ". With great respect we think that the evidence points the other way. Besides the oral evidence of the second plaintiff and the second defendant, who contradict each other, we also have the following documentary evidence :

(i) a testimonial dated the 29th January, 1958, and signed by F. Kukula, Managing Director of the defendant company ;

(ii) a letter dated the 5th February, 1958, from the second plaintiff to the defendants ; and

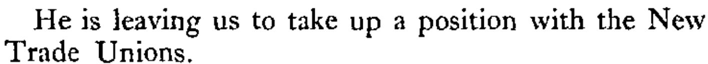
(iii) a letter dated the 26th August, 1958, signed by the second defendant as director of the first defendant company and addressed to the second plaintiff.

The first letter, dated the 29th January, 1958, reads as follows :

" TO WHOM IT MAY CONCERN :

This is to certify that Polydefkis Roubinas of Evrychou joined this company in 1943 as Switchboard Attendant which position he held until 1949 when he was promoted to electrician in which capacity he worked until end of December, 1957.

During his 14 years of service with this Company we found him to be honest and willing.


He is leaving us to take up a position with the New Trade Unions.

THE CYPRUS ASBESTOS MINES
LIMITED

(*Sgd.*) F. Kukula."

It will be observed that the testimonial states that the company found the second plaintiff to be honest and willing and that he is leaving them to take up a position with the New Trade Unions.

With regard to this letter it was the defendants' allegation that Kukula, who was the Managing Director of the defendant company for many years, was at the time on the point of leaving the company and that he was simply a figurehead and, being of a generous nature, he gave that certificate to the second plaintiff. From March, 1957, until the 31st January, 1958, when Kukula eventually left the service of the defendant company, Marcher, the second defendant, who has been described by his counsel as " austere ", was co-manager with Kukula, and he stated in evidence that he had not seen this certificate.

The second letter is the second plaintiff's letter of the 5th February, 1958. The defendant company relies on this letter as the second plaintiff makes use of the Greek word " παῦσις " (dismissal) twice in his letter. But, in that same letter the second plaintiff states that on the 15th January, 1958, he was called to the office of the second defendant who passed remarks to him for " delay " in his work. The second plaintiff then states that he asked why his attention was not drawn at the time of the alleged delay and that, thereupon, the second defendant said to him that this could not go on and that he was not pleased with him (second plaintiff), and that it was then that the second plaintiff asked the second defendant if he wanted him to stop working for the company and that the second defendant replied that it would be preferable if he did so ; and, it is then stated that, in order to avoid more trouble in future, the second plaintiff considered it preferable to submit his resignation. In the concluding paragraph of that letter it is stated that the second defendant allowed the second plaintiff to continue occupying his quarters at Amiandos for two more months and that he gave instructions that he should be paid (gratuity?) for his years of service.

Finally, we have the letter of the second defendant himself, dated the 26th August, 1958, which reads as follows :

"26th August, 1958.

Mr. Polydefkis Roupinas,
AMIANDOS.

Dear Sir,

This is to inform you that the payment of gratuity for past services is paid by the Company, to its employees, at its discretion and under no obligation.

In your case this gratuity is paid to your wife in order to assist her in her financial difficulties, for the uses of herself and of your child both being your dependants.

Although you have resigned your post on your own accord, the Company will, however, pay to you one month's salary in lieu of notice.

Yours faithfully,
THE CYPRUS ASBESTOS
MINES LIMITED
(*Sgd.*) H. Marcher."

Although the second defendant maintained strongly in his evidence that the second plaintiff was dismissed from the company's service and that he did not resign his appointment, nevertheless, he concludes his letter by stating that "although you have resigned your post on your own accord the Company will, however, pay to you one month's salary in lieu of notice".

If the second plaintiff was really discharged from the service of the Company "due to negligence" (as alleged in the leaflet) why should the second defendant state in his letter that he (the second plaintiff) resigned his post on his own accord, and why should the company pay him a month's salary in lieu of notice, in addition to gratuity for past services which was paid to his wife ? If the second plaintiff was dismissed from the service of the Company on account of negligence would he be entitled to any notice or any other benefit ? We think not. For these reasons we reverse the finding of fact of the trial Court and find that the second plaintiff was not discharged from the service of the Company on account of negligence but that he resigned his post.

(*e*) *Maintenance of the second plaintiff's wife :*

In Part "C" of the leaflet the defendant company alleged that in June, 1960, they were still supporting the wife and son

of the second plaintiff out of charity. It is true that the second plaintiff divorced his wife on the 14th April, 1960, that is to say, about two months prior to the publication of the leaflet. So that, strictly speaking, at the time of such publication she was no longer his lawful wife. But, in evidence he admitted that his wife had to apply to the Court to make him pay monthly maintenance for his child and, as the trial Court found, the defendants' evidence that they helped his wife and child stands uncontradicted. This finding is supported by the evidence.

On these findings of fact we now turn to consider whether the plaintiffs have succeeded in establishing the lack of good faith of the defendants. For this purpose we shall consider each part of the leaflet separately.

PART " A " : The statement that the fourth plaintiff enjoyed free quarters in Amiandos is untrue and was published by the defendants without having taken reasonable care to ascertain whether it was true or false. This proves malice of the defendants within the provisions of section 21 (2) (*b*) of the Civil Wrongs Law.

The reported conversation on the telephone between the second and fourth plaintiffs is true. However, we are of the view that the defendants in publishing the words which followed, that is to say, " from the above we get the impression that a conspiracy is taking place against the Asbestos Mines and that the Union wants by all means to call a strike ", acted with intent to injure the plaintiffs in a substantially greater degree or substantially otherwise than was reasonably necessary for the protection of the defendants' rights or interests in respect of which they claim to be privileged, and this proves malice under section 21 (2) (*c*) of the Law in respect of all plaintiffs.

PART " B " : This concerns the slanderous attacks on defendants which are untrue and allegations to the contrary have not been substantiated by the plaintiffs. Consequently the plaintiffs have failed to prove malice in respect of this part.

PART " C " : The allegation that the second plaintiff was discharged from the service of the defendant company, due to negligence is untrue and was published by the defendants without having taken reasonable care to ascertain whether it was true or false. This comes within the provisions of section 21 (2) (*b*). The statement that the defendant company is still supporting the wife and son of the second

plaintiff is substantially true but the defendants in publishing this acted with intent to injure the second plaintiff in a substantially greater degree or substantially otherwise than was reasonably necessary for the protection of the defendants' private rights or interests. And this amounts to malice under the provisions of section 21 (2) (*c*). Likewise, the accusation that the continuous intimidation and attempt to hamper the development of the Asbestos Mines is either a planned anti-foreign campaign on the part of the Trade Union or a personal ambition of the second plaintiff, proves malice under section 21 (2) (*c*) of the Law, in respect of the plaintiffs and, particularly, of the second plaintiff.

For these reasons we are of the view that the plaintiffs have proved lack of good faith by the defendants and the defence of qualified privilege accordingly fails.

The defendants put up the alternative defence of fair comment under the provisions of section 19 (*b*) of the Civil Wrongs Law. The trial Court did not deal with this defence as it came to the conclusion that the defence of qualified privilege succeeded. But, as we have held that the defence of privilege fails, we have to consider the alternative defence of fair comment. In the circumstances of this case, however, we need not deal with this matter at great length.

Section 19 (*b*) provides that it shall be a defence if the matter of which complaint was made was a fair comment on some "matter of public interest". Provided that this defence shall not succeed if the plaintiff proves that the publication was not made in good faith within the meaning of subsection (2) of section 21 of the Law.

The abuse, whether of the right of fair comment or of an occasion of qualified privilege, arising from a wrong state of mind, may avoid the defence of fair comment or privilege, though the language used is not intrinsically unfair in the one case nor in excess of the occasion in the other. In the case of words written on a privileged occasion the defamatory matter is assumed to be untrue and the burden is on the plaintiff, by proving actual malice, to rebut the privilege on which the defendant seeks to rely. In the case of a defence of fair comment on a matter of public interest the burden is on the defendant to show that the facts are true and, if there is any evidence of unfairness, that the comment is objectively fair, and it is then open to the plaintiff to prove that the defendant made the comment

maliciously, *i.e.* from a motive of spite or ill will (cf. Halsbury's Laws of England, third edition, volume 24, page 76, paragraph 131).

For the defence of fair comment to succeed the defendant has to prove in the first instance that the matter complained of is a matter of public interest. As the learned authors of Halsbury's Laws (third edition, volume 24, page 72, paragraph 1267) put it, it is not possible to give a precise definition of a matter of public interest.

> " The public acts of public men are certainly matters of public interest on which any one may comment if it is done fairly and honestly, such for example, as a decision of a magistrate, the conduct of public worship by a clergyman, the speeches of public speakers or the attitude of politicians. The terms of the employment of an architect by a local authority, the conduct and employment of the manager of a public cemetery, the discharge by a deputy returning officer of his statutory duties, performances at a place of public entertainment, the housing of workmen, the management of a college, proposals submitted to the Admiralty, proceedings in a court of justice or Parliament, the administration of the former poor law and the conduct of the medical officer and the custody of papers of public interest, are examples of matters of public interest. The contents of a newspaper are a subject of public interest, but not its circulation.
>
> A book or article which has been published, a picture which has been publicly exhibited, a play which has been performed in public and like matters, are matters of public interest.
>
> A principle underlying many of the cases is that a person who challenges public criticism cannot be heard to complain if the criticism which he has challenged is fair and honest ".

In the present case we entertain considerable doubts whether the matters published by the defendants are matters of public interest. But, having regard to the view which we take with regard to malice (to be stated below), it is not necessary for the purposes of this case to decide this point, and we accordingly leave it open.

We take this view because, even if the defendants succeed in establishing that the publication is a matter of public interest, their defence of fair comment cannot succeed

for the reason that the plaintiffs have proved that the publication was not made in good faith within the meaning of sub-section (2) of section 21 of the Law. This is the same point which we decided earlier in this judgment in connection with the defendants' plea of qualified privilege. The defence, therefore, of fair comment also fails and the plaintiffs are, consequently, entitled to damages.

In the course of the hearing of this appeal both parties asked this Court to assess damages on the record of evidence before it, in case the defendants failed to establish their defence.

We do not propose recapitulating the facts which have already been stated in this judgment, except to say that the second plaintiff is entitled to substantially more damages than the other three plaintiffs as the sting of the libel is really directed against him. The first and third defendants are registered Trade Unions and on the evidence we find that in consequence of the publication of this libel they have suffered loss or detriment to their reputation which comes within the ambit of the definition of the expression " damage " in section 2 (2) of our Civil Wrongs Law.

Having taken all the facts and circumstances into consideration we assess the damages as follows : For the second plaintiff £200 ; for the first, third and fourth plaintiffs £100 each.

With regard to costs we make the following order : The defendants to pay—

(*a*) the plaintiffs' costs for one advocate in the District Court on the amount recovered by all plaintiffs, *i.e.* £500 ;

(*b*) the costs of plaintiffs 1, 3 and 4 in this Court for one advocate on the same scale ; and

(*c*) the costs of the second plaintiff's advocate in this Court on the amount recovered by this plaintiff.

In the result the appeal is allowed, the judgment of the District Court is set aside and judgment entered for the plaintiffs in the above terms.

Appeal allowed. Judgment of the District Court set aside. Judgment entered for the plaintiffs in the above terms. Order as to costs as aforesaid.