

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C. L. 1979/G028

BETWEEN	JOHN SAMUEL GAFAR	PLAINTIFF
AND	ALFRED ALEXANDER FRANCIS	DEFENDANT

Bertram Macaulay, Q.C., for plaintiff.

Roy Anderson and Miss Paulette Francis for defendant.

July 3, 4, 5, 6, 7, 10, 11, 1978:
February 26, 27, 1979:
March 1, 2, 5, 6, 7:
May 21, 22, 24, 25, 28, 29, 30, 31:
June 1:
November 5, 6, 7, 8, 9, 12, 13, 14, 15, 16:
May 2, 1980;
July 24

CAREY J :

On 2nd May, 1980, I gave judgment for the defendant with costs, intimating at that time, that the reasons therefor were in draft, and would be published later. That promise, I now fulfill.

In the year 1975, the plaintiff was a lecturer at the University of the West Indies, Mona Campus. He was a member of the Department of Economics, whose head, at that time, was Professor Alfred Francis, the defendant. In October of that year, the plaintiff prepared a paper intituled "Mark-ups in the Distribution Sector and the Inflationary Process in an open Dependent Economy: The Jamaican Experience." The paper was accepted for publication in an academic journal "Social Issues in Jamaica," in December, but in November of that year, the

" John

Aggrey and myself have taken a careful look at your paper in the light of allegations that it resembles very closely the wording and tables contained in an NPA paper on the subject. I am of course referring to the second half of the paper.

The similarity is beyond question and we cannot in these circumstances publish it.

(Sgd.) Carl Stone
25. 11. 1975 "

It was also the intention of the plaintiff that his paper should be presented at the Seventh Annual Regional Monetary Conference which was scheduled to be held in Georgetown, Guyana. The co-ordinator, Dr. Compton Bourne, then a Research Fellow in the University at Mona, decided against its presentation, firstly, because the request for its inclusion was belated, and secondly, his appreciation of a synopsis of the paper, compared with the National Planning Agency's, showed a "significant overlap."

The plaintiff had also made available to some members of his Department, including the defendant, copies of his paper, on which he wished to have their personal comments. Invoking the assistance of a colleague, Dr. Trevor Munroe, the plaintiff submitted a copy to the Prime Minister, who, for his part, was not a little impressed and proffered "preliminary congratulations" in a letter to the plaintiff dated November 14, 1975. The Prime Minister also directed that a meeting under the chairmanship of Professor M. G. Smith, a Sociologist, be convened to discuss the implications of "this very thorough piece of work." This seminar took place at Jamaica House, on 24th November, 1975. It was a very distinguished gathering. Assembled were: G. Arthur Brown,

presumably, 'to speak to' his paper. The meeting was, however, less than cordial: it was not the calm and dispassionate academic discussion which the plaintiff asserted was its tone, and indeed came to a premature close. In my view, the plaintiff was less than candid with the court in this regard. The evidence of the Governor of the Bank of Jamaica and the Director of Social and Sectoral Planning in the National Planning Agency, which I preferred, did not accord with that description of the meeting. The plaintiff was, in fine, accused of plagiarism.

Subsequent to this aborted meeting, rumours became rife on the University Campus, at Mona, that the plaintiff's 'magnum opus', far from being the original piece of work which its author claimed for it, was little more than a rehash of an unpublished paper, entitled "The Distribution Chain in Jamaica" and prepared by Professor Hines for the National Planning Agency, a Department in the Prime Minister's Office.

The plaintiff was, understandably, perturbed at this unhappy turn of events. The defendant raised the matter with him on the morning of 28th November, 1975. On that very date, the plaintiff wrote signifying his intention to resign, effective September, 1976. Subsequently, however, on December 5, he requested the Registrar to "place his resignation in abeyance." The defendant, as head of the Department of Economics, summoned a meeting of members of the Department for December 1, 1975. The plaintiff attended. This meeting was adjourned for the next day, as it was plain that all had not read both papers. Although encouraged to attend by the defendant, the plaintiff excused himself from that adjourned meeting on the ground that he did not wish his presence to inhibit a full and frank discussion

which they all affixed their signatures. It was in the following form:

"

UNIVERSITY OF THE WEST INDIES
DEPARTMENT OF ECONOMICS

December 2, 1975.

Statement from the Department of Economics
on John Gafar

1. It is our opinion that Section III of 'Mark-ups in the Distribution Sector and the Inflationary Process in an Open Economy: The Jamaican Experience' by John Gafar presents as the work of the author what is essentially the work of the National Planning Agency contained in an Appendix A entitled 'The Distribution Chain in Jamaica.'
2. The members of the Dept. of Economics condemn the action of our colleague and inform the University Community and the National Planning Agency of its condemnation.
3. The members of the Dept. of Economics, including its Chairman, withdraw the recommendation of tenure for John Gafar made by the Chairman on October 2, 1975.
4. The members of the Dept. of Economics call on John Gafar to resign with effect from July 31, 1976.

cc. John Gafar

Director, National Planning Agency
Registrar
Vice-Dean, Faculty of Social Sciences
Head, Dept. of Management Studies
Head, Dept. of Government
Head, Dept. of Sociology
Acting Director, ISER
President, Guild of Undergraduates
Dean, Faculty of Arts and General Studies
Dean, Faculty of Natural Sciences
Dean, Faculty of Medicine.

A. A. Francis

.... Brown [Indecipherable]

R. Nugent

Mark Figueroa

Herman Brann (Sec. 1, 2 & 3; not 4)

D. H. Ramgee Singh (Sec. 1, 2 & 3, not 4)

Michael Whitter

This then was the genesis of this action for libel launched by the plaintiff against the Head of his Department, an action set in Academia and concerned with the discipline of Economics. The trial consumed some 33 days of hearing, resulted in reams of voluminous notes of evidence being faithfully recorded in long hand, occupied the attentive efforts of a goodly number of learned counsel whose number, however, dwindled as the case marched on with less than deliberate speed. It spanned more than sixteen months divided into four periods of working days. I should imagine that by any reckoning, costs will be not inconsiderable.

I must proffer my most sincere apologies to the protagonists and their legal advisers for the seemingly protracted wait, but the nature and importance of this matter, the period over which the trial extended, and a number of important events which supervened, altogether resulted in this delay. The agonising suspense is much regretted.

With those **prefatory** observations, I now turn, first to the pleadings. In paragraph 6 of his statement of claim, the plaintiff averred that the words contained in the said statement: "in their natural and ordinary meaning and/or by way of innuendo meant and were understood to mean that the plaintiff was guilty of: (a) plagiarism."

There were a number of defences pleaded. They were five-fold, and succinctly stated, were as follows:

(i) a denial that the words bore, or were understood to bear, or were capable of bearing, the alleged meaning;

(ii) justification;

(iii) qualified privilege

defences of qualified privilege and fair comment.

Before the case began in earnest, an application for a number of amendments were sought on behalf of the plaintiff, and there were some few others in the course of the protracted hearing about which I have no complaint. I regret the necessity to comment on this aspect of the case, but I am impelled to do so as there is little I can find to commend this practice, which occurs, in my experience, with some frequency. It often tends to prolong a trial quite unnecessarily, and results in costs being commensurately and unnecessarily being increased, and it conveys the impression that proper preparation has been postponed for the last possible moment. As is well known, the Cause Lists continue to increase apace by the natural and inevitable addition of cases, and therefore, nothing should be done to prolong hearings and so defer the timely disposal of those later cases. The observation of Lord Widgery, albeit in different circumstances, is, I think apposite:

" A judge is to be encouraged to promote the efficiency in the administration of justice which the co-operation of counsel will produce. "

R. v. Davies (1975) 2 W.L.R. 586 at page 589.

I am nonetheless grateful for the great assistance of counsel who endured with me to the end, and I would like to commend the industry and the care they displayed, throughout this somewhat lengthy hearing.

I begin this part of the judgment by considering the exact meaning of the words in paragraph 1 of the alleged libel (hereinafter referred to as "the statement"), in order to determine

2. " A purloined idea, design passage or work. "

Webster's Dictionary adds:

" to appropriate without due acknowledgement
the ideas or expressions of another. "

The sting of the alleged defamatory statement was to be found in the first paragraph of "the statement." What the reasonable man would understand it to say was that section III of the "Gafar Paper" (hereinafter referred to as such) was for all practical purposes the ideas contained in the NPA paper" (hereinafter referred to as such); the plaintiff had contributed nothing of significance. In other words, it was not an original piece of work. Thus, what appeared in paragraph 1 of "the statement" partook of the definition of plagiarism. Accordingly, I found that those words did impute to the plaintiff that he had put forward as his work what was no more than the purloined ideas of the "NPA paper".

Are the words defamatory of the plaintiff? Although no serious arguments were pressed on me by the defendant in this connection, I was not, of course, relieved of the task of considering this aspect of the case. The plaintiff was, at the material time, a lecturer in the University of the West Indies. He was obviously an ambitious young man, impatiently seeking fame and fortune in his chosen field of Economics. He was engaged at that time in writing a Ph.D. thesis in that discipline. He had written other academic papers which had been published. The imputation contained in "the statement" plainly reflected to his discredit as an academician and a lecturer: it was an academic offence. It certainly would lower him in the estimation of right thinking members of society, generally.

decision. But I have come to the conclusion that the words in paragraph 1 of "the statement" were, as a matter of law, capable of conveying a defamatory imputation and did in fact, do so.

The main thrust of the defence, was not in that initial feint but in the plea of justification, namely:

" that the words contained in 'the statement' whether in their natural and ordinary meaning or whether with the innuendo meaning alleged, i.e., plagiarism, were true in substance and in fact. "

The defendant had cast upon him the burden of demonstrating that the "Gafar paper" was not the original work of its author, but substantially the work of the N.P.A." It will be necessary, I fear, to consider in a little detail, the nature and scope of the onus thus placed on the defendant. But, before I embark upon that exercise, I should like to remark on the circumstances in which the plaintiff came into possession of the "N.P.A. paper," and the data on which it was based, further his motive for writing the "Gafar paper" and his knowledge of the authorship of the N.P.A. paper," as this background information is essential to a full and proper understanding of this particular defence.

With respect to the "N.P.A. paper", this was prepared by Professor A. G. Hines, as a result of a survey carried out by that agency and circulated to members of the Economic Council. The evidence of Dr. Headley Brown was important in showing how the "N.P.A. paper" and the survey came into the plaintiff's possession. I preferred his evidence in this connection to that of the plaintiff, whom I regret to say, I found to be less than frank with the court. I think it right, at this point, to say, that where there was any conflict of fact between the plaintiff and

certain economic projects which the Agency was minded to undertake. There were two specific projects which had been identified: the first related to a projection of demand for industrial goods 1977/80, and secondly, a projection of "imported goods-demand" in Jamaica during this same period. The decision was taken to appoint the plaintiff at the level of a Chief Planner, and to provide him with appropriate material. He was therefore handed a copy of the "NPA paper", some tables referred to throughout the trial as the "Yellow Sheets" (Documents 4 - 7) [hereinafter referred to as the "Yellow Sheets"] and a contracted version of the data extracted therefrom. He had been told that these projects were being undertaken under the supervision of Professor Hines. In the event, the projects were not proceeded with, and he was requested to return the data. But this, he has neglected to do on the ground that he has not yet finished with them.

So far as the plaintiff's evidence went, he had been given permission to use the data and the "NPA paper", in his own research. Dr. Headley Brown flatly contradicted this evidence. For reasons which will later appear, I did not believe the plaintiff; his recollection, I would say, was faulty. There was in existence an "understanding" between the Agency and the Department of Economics. The purport of the understanding was that anything done by University members on behalf of the Agency would not be published by reason of the confidential nature of the information and the desire of the Agency in securing the co-operation of firms in the private sector. It was agreed between the Agency and firms that brand names and names of firms would not be

" The present study which concentrates on the level of margins in the distribution sector is offered as a preliminary analysis to the study of inflation and provides a basis for discussion among those who advocate a radical re-structuring of the economy. As a consequence, no apology is necessary for identifying specific commodities and brand names which are important to illustrate the structure of mark-ups in the distribution sector. "

The final sentence is plainly inconsistent with any ignorance of this "understanding." [Emphasis mine]

The plaintiff testified that he remained in ignorance of the authorship of the "NPA paper," until he saw the comparison table (Document 3) prepared by the defendant, Professor Francis, which showed "Bertie Hines" as the author of that publication. This comparison had been compiled by the defendant about January 9, 1976, after the libel was published.

At the Jamaica House meeting, as I have already recounted, plaintiff's recollection of the occasion was of an academic discussion in a cordial and friendly atmosphere. It was somewhat surprising to learn from the plaintiff himself that his resignation was prompted by the rumours on the Campus and "what had occurred at the Jamaica House meeting." At that meeting, where his misconception of Hines' theories was pointed out, I found it difficult to accept that he was then totally unaware of the author of the "NPA paper." Even if he did not appreciate its authorship at the time the paper was handed to him by Dr. Headley Brown, then on reading it, as he perforce was constrained to do in preparing his own paper, he must have recognised its source. In the first 19 pages of the "Gafar paper" there are a number of footnotes