

JERSEY / JUDGMENT

1999/201 - Le Main v Eves [1999]

UR 201 (23 November 1999)

[1999] UR 201

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JUDGMENT

THE COMMISSIONER: The Plaintiff is a Deputy of the States seeking re-election in No 2 District of St Helier. Elections will take place tomorrow, 24 November.

The Defendant was a guest house proprietor whose licence was revoked some years ago by the Tourism Committee of which the Plaintiff was a member. The Defendant lost his livelihood, and later suffered a

Dégrèvement.

He blames the Plaintiff, at least in part, for these misfortunes.

On 15 December 1997 the Defendant took out an Order of Justice against the Plaintiff, making claims that the Plaintiff had misused his position as a States Member. Those allegations were struck out by order of the Royal Court of 30 March 1998.

On 27 October of this year the Defendant wrote to the Plaintiff's legal adviser saying that, unless the Plaintiff withdrew from the electoral race, he would make a number of public allegations against the Plaintiff. Those allegations were set out in that letter.

As a result of the threat, the Plaintiff obtained injunctions against the Defendant on 2 November. It is necessary for us to refer to the passages which were the subject of the injunction, and to the Order itself. The particulars of the injunction are numbered (a) to (g) and I quote:

"Your client has a consistent record over the past twenty years of having regularly appeared in Court to answer charges of fraud, deception, and assault."

The Plaintiff is at the moment flagrantly and deliberately in breach of an injunction which I have taken out against him"

During a personal conversation I had with one of the most prominent advocates of the Royal Court earlier this year, when we were discussing the criminal activities and criminal records of States Members, he quite voluntarily confirmed that your client "had a criminal record, but they let him off".

The Plaintiff is continually mis-using and abusing his position as a States Member.

I am informed by a member of the public that because of the Plaintiff's position, further allegations of fraud were not proceeded with.

The facts of my current Court action prove that Senator Rothwell found a willing ally to carry out the destruction of our lives in the plaintiff.

The behaviour of Deputy Le Main during his time in office is nothing short of deplorable.

The learned Deputy Bailiff granted interim injunctions in the following form:

"IT IS HEREBY ORDERED AS FOLLOWS:

Service of this Order of Justice will operate as an immediate interim injunction restraining the Defendant from either at the nominations meeting at the St Helier Parish Hall on 3 November, or at subsequent hustings for the said Deputies elections, or else otherwise orally or in writing, repeating the allegations made in the letter from the Defendant to the Plaintiff's legal adviser, Advocate P M Livingstone, dated 27 October 1999, or making any similar allegations."

On 17 November, we sat to consider an application by the Defendant to lift the injunctions. On that day we declined to do so, except in respect of injunctions (d) and (g). In the Defendant's affidavit dated 16 November, in support of his application to lift the injunctions, are the two following passages: I read from paragraph 4, the second sentence:

"If an action were commenced by Mr Le Main based on this letter, I would seek to plead justification by way of a defence."

We pause for a moment to say that so far no defence has been filed. Paragraph 9 is as follows:

"The extent of the injunction is far reaching, and I am concerned that any criticism of Mr Le Main may result in contempt proceedings. My freedom of speech is severely hindered by this injunction. I would respectfully suggest that this situation should not be permitted to continue and the injunction should be lifted."

We, of course, uphold freedom of speech because it is a most precious attribute of our civilisation, and it should not be restricted unnecessarily or lightly, and in this connection I refer to a passage which I cited in the case of *Horsfall -v- Sinel* (12 February 1997) Jersey Unreported. At page 14 of the judgment, I referred to a small passage from *Bean On Injunctions* (7

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Ed'n) p.54:

"Freedom of speech is so important that if a person is only saying, or repeating what he honestly believes to be true, an interim injunction will not be granted against him."

On 22 November, that is to say yesterday, we sat to determine a Representation brought by the Plaintiff alleging breaches of the injunctions to which I have referred. It is necessary for me to refer in full to the Representation because it forms the basis for our decision this morning. After reciting some of the preliminary matters regarding the Order of Justice, and the raising of the injunction, the Representation goes on as follows:

"3. Over the course of the weekend of the 20 and 21 November, the Respondent has circulated, or had caused to be circulated, a notice concerning the Representor, which the Representor claims is in breach of the injunction.

4. Specifically, the notice states what is set out in sub-paragraph (A) to (E) below, each of which is followed by the Representor's comment.

A. "Ladies and Gentlemen, here is your Housing President. By affidavit dated 2 November 1999 he admits: it is true to say that I have a criminal record. I have had a total of seven convictions!! (The late Constable John Le Sueur had to resign from the States after one criminal conviction) (Jerry Dorey resigned from the States after one criminal conviction)."

The Respondent does not state what the convictions were for, even though the Representor made it clear in his Order of Justice and supporting affidavit that the convictions were for motoring offences, including parking. The Respondent, by implication when referring to the convictions against the late Constable Le Sueur and Mr Jerry Dorey, suggests to any recipient of his notice that the offences were serious and render the Representor unfit for public office. By failing to specify the offences by type or date, the Respondent has acted maliciously and is in breach of the injunction preventing him from repeating the allegations in his letter of 27 October, or from making any similar allegations.

B. "I once stood trial about ten years ago in relation to the alleged forgery of a signature, I was acquitted. I was once, about 18 years ago charged with an assault, I was acquitted. How many States Members have ever even stood trial for such criminal acts as forgery or assault."

The statement of fact is true, but there is an implication that the Representor is unfit for public office, merely by reason of having stood trial, even though he was acquitted. The statement was made with malice and is not in the public interest.

C. "It is a matter of public record that Le Main currently has an injunction against him, which has been in place for nearly two years now, to restrain him from acting unlawfully against members of the public."

The statement is untrue. The injunction does not restrain the Representor from acting unlawfully against members of the public. The injunction restrains the Representor from: "acting abusively, aggressively hostilely and insultingly against the Plaintiff (The Respondent) and his wife".

The injunction is personal to the Respondent and his wife. The Respondent explicitly or alternatively implicitly suggests that the injunction is both wider in its terms and in the class protected by it than is in fact the case. This false statement carries with it an implication that the Representor has, in general terms, acted unlawfully against members of the public.

D. "It is a matter of public record that while a member of the Housing Committee, Le Main appeared in the Royal Court to face an action alleging basically (1) interference with contractual relations between private persons and certain other persons and authorities (2) making an intimidating telephone call. (3) slander of a private person. Le Main admitted (1) and (3) but denied (2). However, the Court found (2) proven. The Court made a declaration that Le Main is not entitled to interfere unlawfully with independent people's contracts with third parties."

The statement is in part, untrue. The Representor was not a member of the Housing Committee, although he was a States Deputy at the time (in 1982). The statement does not make it clear that this was a civil action, nor does it make it clear that the Court specifically did not award any damages against the Representor, or indeed that the action took place 17 years ago. The statement carries an implication that the Representor is not fit, as a result of the outcome of the action, to hold public office.

E. "Further he was a member of the Tourism Committee in an action which is due to come before the Royal Court, where a man was forced into Dégrevement and lost his family home."

The statement is untrue and misleading. The action is not due to come before the Royal Court. The claim 98/08, which was referred to and considered by the Court in the hearing of 17 November, was struck out in or about March, 1998. The Respondent fails to comment that as the author and/or distributor of the notice, he is the person who was forced into Dégrevement and who has lost his family home. Such comment would enable the recipient of the notice to afford a sense of balance to the notice since it would have made it clear that the author and/or distributor of the notice had a sense of grievance against the Representor, which is not the case, on the face of the notice. The Representor claims that the statement is made with malice."

The Representor, or as I have called him the Plaintiff, asked the Court to find that the Defendant is in breach of the injunctions.

In order that the summons could be served upon Mr Eves in time for him to appear when we sat yesterday afternoon, the Bailiff had foreshortened the time requiring him to be warned to one hour, but he could not be found and not unnaturally, Mr Taylor, who had been Mr Eves lawyer

à tour de rôle,

had no instructions, but he assured us that he would seek fresh instructions, or at any rate another certificate in respect of the

tour de rôle,

if the matter were to come before the Court today, as it has, and he has again appeared for his client.

The Court yesterday found that there had been a

prima facie

breach of the injunction, and ordered the arrest of Mr Eves. However, he was not found by the Court Officer, but appeared this morning and, as we have said, has instructed Counsel.

Mr Taylor submitted, first, that injunctions should be strictly controlled. He cited no authority, but, as we conceive it, allegations of breach of injunction have to be proved beyond reasonable doubt, and if that is so, and that is the law, the Court is unlikely unnecessarily to extend injunctions beyond what has to be imposed or enforced under the terms of the injunctions themselves. However, it is appropriate at this stage to remind the parties, and in particular the Defendant, that at the end of the Order of Justice - and I have already read the appropriate extract - appear the five words:

"

or making any similar allegations"

.

Secondly, Mr Taylor said we should consider the whole of the Order of Justice and only if we found, having done so, that there were breaches in respect of each of the injunctions, should we find that his client was indeed in contempt.

Thirdly, we should not interpret the injunction, so as to restrict unnecessarily his client's freedom to criticize candidates standing for office in the States. He might, in that connection have cited a further passage from *Horsfall -v- Sinel* which is to be found on the same page that I have already mentioned - page 14 - it is a passage from *Gatley on Libel and Slander* (8

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Ed'n) para. 884:

"Comment on a matter of Public Interest:

In cases of comment on a matter of public interest, the limits of comment are very wide indeed; this is especially so in the case of public men. Those who fill public positions must not be too thin-skinned in reference to comment made upon them. One who undertakes to fill a public office offers himself to public attack and criticism and it is now admitted and recognised that the public interest requires that the man's public conduct shall be open to the most searching criticism. Unless there is some clear evidence of malice or some mis-statement of fact"...

and I stress these last words:

"...mis-statement of fact... no action should be commenced however severe the terms of criticism may be."

There are in fact a number of mis-statements of fact in the second document which Mr Eves eventually admitted he had either written, or caused to be written, and published. It is not necessary, we think, for us to detail them, because we intend to take the view, as urged upon us by Mr Livingstone, that we should stand back and look at the picture as broadly as possible. Mr Eves, as Mr Livingstone rightly pointed out, was on notice as the Court had only recently refused to lift five of the seven injunctions, and he must have realised that he would need to exercise great care, should he continue to issue similar statements, if he were not to fall foul of the Order of Justice and be in breach of the injunctions.

I am now going to look at an extract from Halsbury (4
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Ed'n, volume 15.) where the following passage at paragraph 705 appears:

"It is an illegal practice if before or during an election, any person for the purpose of affecting the return of any candidate at the election makes or publishes any false statements of fact in relation to the candidates personal character or conduct, unless he can show that he had reasonable grounds for believing, and did believe, the statements to be true...

The false statements of fact need not be defamatory at common law, so long as this is a statement which is calculated to influence the electors ...

The words of the statement will be interpreted according to their real and true meaning, and not necessarily according to their literal sense".

The following footnote is appended:

"Silver -v- Benn (1896) 12 TLR199 at 200DC; Kay L. J. states that what the passage meant to convey, the question to be determined is what, in the circumstances, is the true meaning which the reader would place upon the statements... The true meaning will depend on the occasion of the publication, the persons publishing, the persons attacked, and the readers intended to be addressed...".

There is some conflict between the Scottish and English authorities as to whether that represents the Law. We are satisfied that it is a very fair and proper statement. In support of that footnote, the following passage is to be found in volume 15 of Halsbury (4

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Ed'n) under Injunctions at paragraph 883:

"A person making or publishing any false statement of fact before or during an election in relation to a candidate's personal character or conduct at an election, may be restrained by interim or perpetual injunction by the High Court or the county court from any repetition of that false statement, or of a false statement of a similar character..."

I stress those words:

"In relation to the candidate".

It is clear that the learned author there, although he had not heard Mr Livingstone on the subject, supported his view that it is impossible in injunctions of this nature to foresee every kind of false statement or innuendo that might arise. So the words

"Or similar statement"

are in fact covered by the concluding words of the Order of Justice.

After looking at the Representation in the context in which we have, i.e. of the relationship between the Plaintiff and the Defendant, of the history of Mr Eves' cases against the Plaintiff, and of other matters which were mentioned in the course of the hearing, we have come to the conclusion that Mr Eves was in breach of the injunctions imposed by this Court.

In that context however, I have to say this: I instructed the Jurats that the burden of proof is the same as that in a criminal charge; that is to say they had to be satisfied as the Judges of fact in this Court, that the Defendant, Mr Eves, was in breach of the injunctions, beyond reasonable doubt. They did so find, and I concur fully with them, and therefore, Mr Eves, you are in contempt of this Court by being in breach of its very clear orders. Mr Taylor do you wish to take instructions? I have to tell you that this Court has the power to commit.

The Court, of course, accepts the unreserved apology, but the damage has been done. In our view this was a deliberate attempt to circumvent the orders of this Court, and people who do that must take responsibility for doing it, and accept retribution. Stand up Mr Eves. You are sentenced to 48 hours in prison.

Authorities.

4 Halsbury 15: pp.540-1;

4 Halsbury 28: pp.40-6.

Horsfall-v-Sinel (12 February 1997) Jersey Unreported

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