

JERSEY / JUDGMENT

Pitman -v- Jersey Evening Post and 1st Jersey Ltd [2012] JRC 069 (26 March 2012)

[2012] JRC 069

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judgment

the commissioner: 1. The issue which arises in the directions hearing of this action for damages for defamation is whether it is open to a plaintiff to adduce evidence in support of an innuendo meaning not only as to the extrinsic facts relied on in support of the innuendo but also as to the fact that they understood the words complained of to bear that innuendo meaning. The plaintiffs, Mr and Mrs Pitman, seek damages for libel from the Jersey Evening Post ("JEP") and 1 st Jersey Limited. They are Deputies of the States of Jersey Assembly. They contend that they were libelled in a cartoon published by the defendants on Christmas Eve in 2008. 2. Mr and Mrs Pitman rely not only on what they assert is the natural and ordinary meanings of the cartoon depicting them together with a caption "4 x the salary darling!", but also in the alternative on innuendo meanings, namely:- (i) that the plaintiffs were greedy money-grabbers who were motivated to seek election to the States purely or mainly for the financial reward it would bring them, namely a fourfold increase in salary; (ii) that the plaintiffs were greedy money-grabbers who had deceived their respective electorates by deliberately misrepresenting to them that they were seeking election for altruistic reasons when in fact each of them was doing so purely or mainly for the financial reward it would bring them, namely a fourfold increase in salary. 3. The facts which are relied on in support of those innuendo meanings are these:- (i) The plaintiffs are husband and wife. They are and were at all material times Deputies of the States of Jersey Assembly (the "States"). The first plaintiff has been Deputy for the St Helier No.2 district since 5th December, 2005, and was re-elected on 26th November, 2008. The second plaintiff was elected for the first time on 26th November, 2008. He is Deputy for the St Helier No.1 district. (ii) Both plaintiffs are members of the Jersey Democratic Alliance ("JDA"), a left of centre party formed in 2005 which aims, among other things, to ensure greater accountability and transparency in government and pursues a social justice agenda. (iii) The plaintiffs' respective campaign literature for the 26th November, 2008, States election emphasised their social justice agenda. Among other things, the first plaintiff's literature emphasised her desire to serve her constituents and spend her time attending to her constituents' problems, and the second plaintiff's emphasised his deep concern about the direction that the government had taken in recent years, creating an ever-widening gap between the "haves" and the "have nots" and contained a promise that, if elected, he would give his constituents "three years of unstinting hard work and

commitment". (iv) The [said] facts and matters or their substance would have been known to a very large but unquantifiable number of the readers of the cartoon and such readers would have understood the words complained of to bear the meaning set out above. (v) The facts and matters set out above or their substance would have been known to a substantial but unquantifiable number of the readers of the cartoon and in particular a large number of readers in the plaintiffs' respective constituencies and such readers would have understood the words complained of to bear the meaning set out above. 4. The starting point, which is common ground between the parties, is that, where a plaintiff complains of the natural and ordinary meaning of the words complained of, no evidence may be called by the plaintiff (or by the defendant) in support of his case on meaning. The natural and ordinary meaning is for the jury (if there is one) or for the judge or in Jersey for the jurats to decide. 5. However, when as here the plaintiffs rely on an innuendo meaning, it is open to the claimant to adduce evidence of the extrinsic facts which are relied on by the plaintiff to establish that meaning. Of course the existence of the extrinsic facts will of themselves not assist the plaintiff; what must also be established is that some at least of those who read the libel knew at the time of the extrinsic facts. 6. In the present case Mr and Mrs Pitman wish to adduce evidence from a number of witnesses not only as to the existence of the extrinsic facts which are said to support the innuendo meaning but also as to the meanings which those witnesses understood the words to bear. The question is whether it is permissible for the plaintiffs to call such evidence. 7. The case for the defendants is that neither the cartoon nor its caption is defamatory of the plaintiffs either in their natural and ordinary meaning or by innuendo. 8. The evidence upon which the plaintiffs seek to rely in support of the innuendo meanings may be summarised as follows: they seek to call a number of witnesses as to the existence of various facts which are not to be found in either the cartoon published in the JEP or in the caption but which, according to those witnesses, were known to them. Such facts are invariably called "extrinsic facts". It is common ground between the parties that the plaintiffs are entitled to call these witnesses to give evidence as to the existence of those extrinsic facts. 9. The plaintiffs contend that they are entitled not only to call evidence as to existence of the extrinsic facts and that those facts were known to these witnesses but also to adduce evidence from these witnesses that, in the light of that knowledge, they understood the words to bear the innuendo meanings set out above. The case for the defendants is that, whilst it is open to the plaintiffs to call evidence of the existence of extrinsic facts which are known by the witnesses in question, it is illegitimate for those witnesses to give evidence that they understood the words to bear those innuendo meanings. 10. Miss Christina Hall, who represents the plaintiffs, contends that the evidence is admissible. She relied on paragraph 34-28 of the current (11 th) edition of Gatley on Libel and Slander and on a recent decision of the Court of Appeal in *Baturina-v-Times Newspapers*

[2011] EWCA Civ 308 . 11. Mr Danny Le Maistre for JEP and Mr David Steenson for 1 st Jersey Limited relied principally on the judgment of Sedley LJ in *Baturina* and on the decision of the Court of Appeal in *Hough-v-London Express Newspaper*

[1940] 2 KB 507. The submissions of Mr Stevenson were to the same effect. 12. If, as is common ground between the parties, it is not open to a plaintiff who relies solely on the natural and ordinary meaning of the words complained of to adduce evidence from publishees as to the meaning which they understood the words to bear, it is difficult to see why a plaintiff relying on an innuendo meaning should be allowed to do so. 13. However, as Miss Hall pointed out, the current (11 th) edition of Gatley includes at paragraph 34.28 this passage:- "Where the claimant has pleaded an innuendo he may, in addition to calling evidence of the extrinsic facts on which he relies, call witnesses to state the meaning in which they understood the words. The origins of this rule are the same as that which applies to evidence concerning the identification of the claimant." The only authority cited in support of this proposition is *Broome-v-Cosden* (1845) 1 CB 728. 14. The following paragraph 34-29 includes this sentence:- "The claimant may be able to give evidence on meaning if he has pleaded an innuendo". Reference is made in the footnote to that sentence to a dictum of Staughton LJ in *Winyard-v-Tatler Publishing Co* [unreported 16.6.91]. I note, however, that it refers only to the evidence which the claimant/plaintiff may give. 15. A more conventional approach is to be found in *Hough-v-London Express Newspapers* which was a case where the plaintiff relied solely on an innuendo meaning. The trial judge had held that many people would have known the extrinsic facts relied on in support of the innuendo meaning relied on by the plaintiff. Two witnesses called on behalf of the plaintiff gave evidence ("perhaps unnecessarily" according to Slessor LJ). It was held that, in order to establish an innuendo meaning, it is sufficient for the plaintiff to prove that there are persons who know the special (i.e. extrinsic) facts and so might understand them in the secondary (i.e. innuendo sense). 16. In his judgment in *Hough Goddard* LJ posed the question whether it was necessary to prove more than that there were people who know the special (i.e. extrinsic) facts relied on and so might understand them in a defamatory sense. He held that it was unnecessary for the plaintiff to do so, although he added that he did not say their evidence would be inadmissible. 17. More recently the Court of Appeal in *Baturina-v-Times Newspapers*

[2011] 1 WLR 1526 had to consider what evidence may be adduced by a plaintiff in support of an innuendo meaning. The leading judgment was given by Lord Neuberger MR. I note that at paragraphs 44-50 he deals with the evidence which may be called in support of an innuendo meaning but does not say that witnesses may give evidence of the meanings which they understood the words to bear. 18. Sedley LJ, agreeing with Lord Neuberger, says this at paragraph 56:- "My other chief misgiving, though possibly a misplaced one, arises from what appeared from time to time to be an assumption that it will be open to Mrs Baturina to call witnesses to testify to how they reacted to the Sunday Times story in the light of their extrinsic knowledge. It will of course be for the trial judge to decide what evidence is admissible, but in principle it is the jury or, absent a jury, for the trial judge to decide what a reasonable reader will have made of the publication. Where an innuendo is relied on, their judgment will of course be informed by evidence of what the reasonable reader will additionally have known. But it is not the case that a claimant is entitled

without more to put into the witness box a series of witnesses to say on oath what they made of the publication. It may be otherwise where for example a special and limited class of reader is relied on, or where it is necessary to prove damage of a particular kind. But in principle the meaning and effect of the published words, either by themselves or when married with extrinsic facts, is what the court itself is there to decide". 19. It is to be noted that Hooper LJ said that he agreed with both judgments. This is reflected in the headnote at p1528 of the report. 20. In the present case I do not consider that there is any special or unusual feature which displaces the principle to which Sedley LJ referred, namely that it is for the trial judge to decide what a reasonable reader would have made of the publication. The current edition of Gatley expresses a different view. However, Baturina was decided after that edition was published. In my opinion the witnesses to be called in the present case in support of the innuendo meanings can give evidence of the extrinsic facts which were known to them but they cannot, in the light of Baturina , give evidence of what meanings they understood the words to bear. Authorities Gatley on Libel and Slander 11 th Edition. Baturina-v-Times Newspapers

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Prepared on 29 October 2026 · Esheria