THE INDEPENDENT NEWSPAPERS LTD.
v.
DEVADASA

COURT OF APPEAL
TAMBIAH, J. AND L. H. DE ALWIS, J.
C.A. 398/71 (F)
D.C. COLOMBO 55203
24, 25 NOVEMBER 1982 AND
1, 2 AND 3 DECEMBER 1982

Defamation — Innuendo — Qualified privilege.

The plaintiff Devadasa was the Vice-President of the Ceylon Railway Daily Paid Workers Benevolent Association counting a membership of 5000. The defendant newspaper published an article which carried the innuendo that the Association was responsible for several irregularities and a fraud of several lakhs belonging to the Association, that the office-bearers were evading the summoning of a meeting where a vote of no confidence could be passed despite a requisition for such meeting by over 2000 members, excessive interest was being levied from members and members who opposed the office-bearers were harassed.

Held —

Defamation consists in the publication of defamatory matter concerning another without lawful justification or excuse. A defamatory statement is one which tends to diminish the esteem in which the person to whom it refers is held by others, as for example by holding him up for ridicule or contempt.

Although the alleged defamatory paragraph taken individually may not bear a defamatory meaning, the article must be read as a whole in order to extract its true meaning.

The question whether the article as a whole is capable of a defamatory meaning first of all in its natural and ordinary sense is a matter for the Court to determine, looked at from the standpoint of reasonable men or men of ordinary and average intelligence, to whom it is published.

When the test of how reasonable men would have understood the article is applied to it, the correct conclusion would be that the article as a whole is defamatory of the office-bearers.

It is an essential element of defamation that the words complained of should be published of the plaintiff. Where he is not named the test of this is whether the words would reasonably lead people aquainted with him to the conclusion

that he was the person referred to. The question whether they did so in fact does not arise if they cannot in law be regarded as capable of referring to him. If a defamatory statement made of a class or group can reasonably be understood to refer to every member of it, each one has a cause of action.

The article was defamatory of every one of the office-bearers of the association and the respondent (Devadasa) being one of them, could sue. There was extrinsic evidence of witnesses who understood the article as referring to the office-bearers.

There was an allegation that there was a fraud committed by the office-bearers running into about 4 lakhs of rupees and that the profits of the association had not been properly shown in the administration report.

It is not necessary that the defendant should be under a legal duty to make the communication. It is sufficient that he is under a moral or social duty to make it. The person to whom the communication is made must have a similar duty or a legitimate interest to receive it. This reciprocity is essential. If it is fairly made by a person in the discharge of some public or private duty, whether legal or moral or in the conduct of his own affairs in matters where his interest is concerned, the occasion prevents the inference of malice which the law draws from unauthorised communication and affords a qualified defence depending on the absence of actual malice.

In the present case there was no evidence of malice or animosity.

Would the great mass of right-minded men in the position of the defendant have considered it their duty to speak ? The test is objective not subjective. The question is not whether the defendant believed that a duty existed but whether a duty in fact existed.

In the present case there was no legal duty cast on the defendant to publish the article. Nor was there a moral or social duty. The news item may at the most have been of interest to the members of the association. The general public, consisting of the readers of the newspapers to whom it was published would certainly have no interest in the affairs of this insignificant society.

Cases referred to :

1. *Stewart Printing Co. (Pty) Ltd. v. Conray* 1948(2) SALR 707

2. *Lewis and another v. Daily Telegraph Ltd.*, and *Lewis and another v. Associated Newspapers Ltd.* 1962 2 All ER 698 (H. L. (1963) 2 All ER 151).

3. *Levy v. Moltke* 193 4 E.D.L. 269, 315

4. *Kunupffer v. London Express Newspaper Ltd.* (1944) AC 116, (1944) 1 All ER 295

5. *Toogood v. Spyring* 1834 I.C.M. and R. 193

6. *Adam v. Ward* (1917) AC 334.

7. *Stuart v. Bell* (1891) 2 QB 341.

8. *Perera v. Peiris* 50 NLR 145, 158 (P.C.)

9. *Champman v. Ellesmere and another* 1932 (Reprint) All ER 221.

10. *Webb v. Times Publishing Co. Ltd.* (1960) 2 All ER 789.

APPEAL from judgment of the District Judge of Colombo.

H. L. de Silva, S.A. with *Nirmal Fernando* for 1st Defendant-Appellant

C. Renganathan, Q.C. with *J. V. M. Fernando* and *C. Logasunderam* for Plaintiff-Respondent.

Cur. adv. vult

25th February 1983
L. H. DE ALWIS, J.

The appellant is a Company incorporated under the provisions of Ordinance No. 51 of 1938, and is the proprietor of a Sinhalese Newspaper called the " Davasa ". The Respondent, at the material time, was the Vice-President of the Ceylon Railway Daily Paid Workers' Benevolent Association.

The respondent sued the 1st Defendant-Appellant and the 2nd defendant, who was the Editor of the " Davasa " newspaper, for damages in a sum of Rs. 30,000/- in respect of the publication of a defamatory article concerning him in the " Davasa " newspaper of 3rd October 1961. The appellant and the 2nd defendant filed answer admitting the publication of the article in question, but denied that it was of a defamatory nature *per se,* or by reason of an extended meaning (innuendo), and raised the defences of justification, fair comment and privilege.

The learned District Judge after trial held that the article read as a whole was defamatory of the respondent, both by reason of its ordinary meaning and in its extended meaning, and that the

defences taken up must fail. He awarded the respondent a sum of Rs. 7,500/- as damages and it is from this judgment that the 1st Defendant-Appellant now appeals.

At the hearing of the appeal, Learned Counsel for the appellant, submitted that the article was not defamatory of the respondent either *per se* or in an extended meaning and confined his defences only to that of qualified privilege which he submitted was wrongly rejected by the learned District Judge.

The offending article in the " Davasa " newspaper as translated into English is reproduced in paragraphs 4 and 5 of the amended plaint marked Pla 1 to Pla 10, as follows :—

"A Fraud of Funds in Lakhs in the Benevolent Association." (The mark of interrogation in the original Sinhala article, has been omitted after the word " Association "). The translation then goes on to say :—

" From staff Reporter D. C. Satarasinghe.

Pla 1 A petition containing the signatures of a large number of members has been sent to the M.P.s, Ministers and officials including the Prime Minister requesting an inquiry into a fraud involving several lakhs and also into irregularities in the Railway Benevolent Association founded in 1946 having a fund of forty lakhs of rupees and a membership of five thousand. But there has been no outcome so far.

Pla 2 The Government Railway Daily Paid Employees' Benevolent Association was inaugurated in 1956.

Pla 3 It is revealed in a communication addressed to the members by the General Treasury that the chief impediment to this is the fact that this association has not been registered so far.

Pla 4 In reply to a letter addressed to the Ministry of Communication and Transport on the said irregularities the association has received only a letter stating that the matter would be looked into immediately.

Pla 5 It is also stated in that reply that a letter sent to the Minister of Finance had been forwarded to the Minister of Nationalised Services and Labour, who has referred it to the Commissioner of Labour.

Pla 6 While a sum of four rupees is recovered from each member from his monthly wages, interest at the rate of 12 per centum is also charged. It is said that although the Treasury has notified the Secretary that it is illegal to charge this interest, the interest continues to be charged in the same manner.

Pla 7 Since it has been provided in the constitution of the association that if a member resigns he would forfeit the sums he has contributed up to that time, the members are helpless and undecided as to what they could do.

Pla 8 Even the net profits earned by this association which receives membership subscriptions of such magnitude and also interest, has not been properly shown in the administration report.

Pla 9 Though a requisition signed by over two thousand members for a general meeting stating that they have no confidence in the office-bearers has been submitted, the office-bearers have not paid any heed to it.

Pla 10 It is understood that the members who are actively interested in this matter are being harassed by the office-bearers ".

In paragraph 8 of the amended plaint the respondent further pleaded that the headlines and the article, reproduced above, carried an innuendo :—

> " (a) that the plaintiff as an office-bearer of the said association with and among other office-bearers, was responsible for several irregularities and a fraud of several lakhs of rupees belonging to the said association.
>
> (b) that with a view of preventing the matters of fraud and other irregularities being discussed, the plaintiff with and among other office-bearers failed to summon a meeting although requested to do so by a requisition signed by over two thousand members.
>
> (c) That the plaintiff with and among other office-bearers has been dishonest in improperly charging excessive and illegal interest from members, and in not correctly setting out the financial position of the association in its administration report.
>
> (d) that the plaintiff with and among other office-bearers with a view to concealing and persisting in these frauds harassed members who oppose him, and is taking unfair advantage of the position that members cannot resign from the association without forfeiting their contributions ".

Defamation consists in the publication of defamatory matter concerning another without lawful justification or excuse. A defamatory statement is one which tends to diminish the esteem in which the person to whom it refers is held by others, as for example by holding him up to ridicule or contempt. *McKerren, The Law of Delict. 6th Edition page 160.*

In the present case the printing and publication of the article in the " Davasa " newspaper of 3.10.61 is admitted by the appellant but it was contended by his Counsel at the hearing of

the appeal that the article does not refer to the respondent and is not defamatory of him or bear the secondary meaning alleged by him in paragraphs 8(a) to (d) of the answer. Counsel also relied on the defence that the publication of the article was privileged.

The article carries the heading " A Fraud of Funds in Lakhs in the Benevolent Association " with a question mark at the end, although the translation does not show the mark of interrogation. Learned Counsel for the appellant submitted that the title is not an assertion of fact but, as the question mark indicates, only raises a suspicion about an alleged fraud. He further submitted that in paragraph Pla 6 of the article, the allegation is merely that illegal interest of 12 per centum was levied on loans taken and Pla 8 refers to the omission to show properly in the administration report the net profits earned by the Association and that these statements do not constitute an allegation of fraud. The refusal of the office-bearers to pay heed to a requisition to hold a general meeting in order to pass a vote of no confidence against them and the harassment of members who were actively interested in the requisition, it was submitted, also did not amount to fraud. Some of the other paragraphs of the article are manifestly innocuous. Although paragraphs Pla 1 to Pla 10 of the article taken individually, may not bear a defamatory meaning, the article must be read as a whole in order to extract its true meaning. See *Stewart Printing Co. (Pty) Ltd., v. Conray* (1). *Gatley on Libel and Slander,* 5th Ed., page 593; *Dr. Amarasinghe on Defamation and Other Injuries* page 23.

The question whether the article as a whole is capable of a defamatory meaning first of all, in its natural and ordinary sense is a matter for the Court to determine, looked at from the standpoint of reasonable men or men of ordinary and average intelligence, to whom it is published. *Stewart Printing Co. (Pty) Ltd. v. Conray* (1) *Gatley 121.*

Paragraph Pla 1 of the article refers to a petition signed by a large number of members sent to the Prime Minister, other Ministers and officials requesting an inquiry into a fraud

involving several lakhs of rupees in the Railway Benevolent Association.

In *Lewis and another v. Daily Telegraph Ltd., and Lewis and another v. Associated Newspapers Ltd.*(2) the two defendant newspapers each published statements that officers of the city of London Fraud Squad were " inquiring " into the affairs of the (R. Co.,) and its subsidiary Companies "and that the chairman of the R. Co. was Lewis. Lewis and R. Co., brought action for libel against each newspaper. The two sets of actions were tried separately. Lewis pleaded an innuendo to the effect that the statement meant that he had been guilty of fraud or was suspected by the Police of having been guilty of fraud or dishonesty in connection with R. Co.,'s affairs. R. Co, pleaded an analogous innuendo. The defendant admitted that the words were defamatory in their ordinary meaning, pleaded justification in that the fraud squad were at the time of publication inquiring into the affairs of R. Co. The defendants did not seek to justify the extended meaning pleaded in the innuendo. At the trial no extrinsic fact was proved in support of the innuendo, but the trial judge rejected the defendants' submission that the innuendo should not be left to the jury. In summing up the trial judge directed the jury that the words would bear the sense alleged in the innuendo. The jury awarded heavy damages against the newspapers. The Court of Appeal ordered new trials for the reason that no innuendo should have been left to the jury as there was no extrinsic evidence to support the separate cause of action which a true innuendo constituted.

The decision of the Court of Appeal was affirmed by the House of Lords in the case reported in *1963. 2. AER 151.* In the Court of Appeal, Holroyd Pearce L.J., said: " The fact that a man is under inquiry from the fraud squad is detrimental to his reputation ".

That case is distinguishable from the present case because the allegation there was that the affairs of the company were under investigation of the Fraud Squad whereas in the instant case paragraph Pla 1 of the article merely refers to a request made for an inquiry into an allegation of fraud and irregularities in the Society concerned.

In regard to the natural and ordinary meaning of the words in the article, learned Counsel for the appellant submitted that the words in themselves do not contain any imputation or allegation of fraud against the respondent or the office-bearers of the association. The article imputed no blame to anyone, but only highlighted the apathy on the part of the bureaucracy in investigating the allegations brought to the attention of the Prime Minister and other Ministers. Indeed, it was submitted that eventually it did achieve some result, because the association was incorporated by an Act of Parliament in 1965. Before that, its non-registration was an impediment to government control and supervision. But the allegations, which, it was submitted the bureaucracy was slow to investigate, were in regard to a fraud of several lakhs of rupees in addition to other irregularities. The headlines posed the question of fraud and the first paragraph of the article referred to a petition being sent to the authorities regarding a fraud, (not just an allegation of fraud) involving several lakhs of rupees. The association had been formed in 1946 and its funds had risen to forty lakhs of rupees at the time of the publication of the article. There were about 5,000 members and the monthly membership subscription was Rs. 4/- per month. Paragraph P1a 8 states that the net profits earned by the Association from its membership subscription have not been properly shown in the administration report. In the last two pararaphs P1a 9 and P1a 10 the article holds the office-bearers of the association responsible for this state of affairs. A requisition signed by over two thousand members requisitioning a general meeting in order to pass a vote of no-confidence on the office-bearers was ignored by the latter who, it was alleged, were harassing those members who were actively interested in having the meeting held. Reading the article as a whole the learned District Judge has correctly applied the test of how reasonable men would have understood it and has come to the conclusion that the article was defamatory of the office-bearers of the association. I am of the view that his conclusion is right.

It is true that the allegation has not been made against the plaintiff by name. But he was at the time the Vice-President of the

association and learned Cousel for the Appellant conceded, in the course of the argument, that if the article was found to be defamatory of the office-bearers of the association, then the appellant would be liable. Indeed, where a defamatory imputation has been made against a class of persons, every member of that class is entitled to bring an action, if the surrounding circumstances show that reasonable men would be likely to understand the imputation to refer to him as an individual. *Mc Kerron, The Law of Delict, 6th Edition, page 169.*

In *Levy v. Moltke* (3) referred to by Dr. Amerasinghe in his book on *Defamation and Other Injuries,* at page 51, Graham JP said: " . . . But where they (the defamatory words) refer to all the members of a particular number, group or class, that is to definite persons though included under a general term such as " all the officers of this regiment " or " all the members of that jury " each one of that particular group or class can sue . . . ".

In *Kunupffer v. London Express Newspaper Ltd.* (4) the defamatory words complained of concerned Russian political refugees called " Mlado Russ ", with a very large membership in other countries too, though the branch in the U.K. consisted of some 24 members. The appellant who resided in London and was the active head of the U.K. branch of the association contended that the defamatory article reflected upon him personally. It was held that there was nothing to show that the words referred to the appellant as an individual and his claim, therefore failed. Viscount Simon L.C., however observed that: " It is an essential element of the cause of action for defamation that the words complained of should be published 'of the plaintiff'. Where he is not named the test of this is whether the words would reasonably lead people aquainted with him to the conclusion that he was the person referred to. The question whether they did so in fact does not arise if they cannot in law be regarded as capable of referring to him. If a defamatory statement made of a class or group can reasonably be understood to refer to every member of it, each one has a cause of action ".

In the present case, as stated earlier, the defamatory words referred to the office-bearers of the Railway Benevolent Association which consisted of a very small group of persons, namely, the President, Vice-President, Treasurer and Secretary. The respondent was the Vice-President of the Association at the time, and the defamatory article was capable of referring to the respondent and would have led reasonable men who knew him to the conclusion that it did. There is ample evidence called by the respondent to establish this fact. Witness Gunapala who was a member of the association and knew the respondent as the Vice-President in 1961, concluded that the article referred to him as an office-bearer. He also testified to the fact that the funds of the association were in the custody of the office-bearers and questioned the respondent about the article.

The learned District Judge was therefore right in coming to the conclusion that the article was defamatory of everyone of the office-bearers and that the respondent being one of them, could sue.

There was evidence that there had been some irregularities in the association involving a sum of over three and a half lakhs of rupees between the years 1958 and 1959. But the article does not specify the period of the alleged fraud it referred to, so that any reasonable reader of the article would have attributed the alleged fraud to the present office-bearers of the association and that only aggravated the libel against the respondent.

The respondent also alleged in paragraph 8(a) to (d) of the plaint that the article in its extended meaning was defamatory of him. The headlines of the article bear a mark of interrogation and where words are put interrogatively, an innuendo is also necessary. *Gatley page 45.* Whether the statement in the article could bear the meaning assigned to them is a matter to be determined by Court and whether they were so understood is a matter for the respondent to establish. Sub-paragraph (b) of paragraph 8 relates to the irregularities referred to in the article, while sub-paragraph (c) refers to the levying of illegal interest of

12% from members who had taken loans and sub-paragraph (d) deals with the harassment by the office-bearers of those members who persisted in their attempt to requisition a general meeting to question the conduct of the office-bearers. These sub-paragraphs do not carry the extended meaning of fraud attributed to the office-bearers and the learned judge has rightly held so. It is otherwise in regard to paragraph 8 (a) of the plaint, where the article is reasonably capable of bearing the meaning assigned to it, namely that there was a fraud committed by the office-bearers of the association running into about four lakhs of rupees.

Extrinsic evidence was led by the respondent to establish the innuendo. Witness Cabraal who translated the article said that he inferred that a fraud had been committed by the office-bearers because of the allegation of fraud contained in it and from the statement that the profits earned by the association had not been properly shown in the administration report. Chandrapala Perera, another witness also testified that he understood the article to mean that the office-bearers had committed a fraud of funds of the association. Gunapala who was a member of the association concluded from a reading of the article that the office-bearers were guilty of a fraud involving lakhs of rupees and had questioned the respondent about it.

Although there was a little confusion over the learned District Judge's finding on the issue of the innuendo pleaded in paragraphs 8(a) to (d) of the plaint, later in his judgment he has held quite clearly that the innuendo set out in paragraph 8 (a) alone had been established but not that in the other paragraphs 8 (b) to (d).

Learned Counsel for the appellant submitted that an innuendo cannot be drawn from the article because it could not be said that the article was reasonably capable of meaning that the office-bearers were responsible for the fraud. He further submitted that the learned District Judge erred in coming to the conclusion that the innuendo contained in paragraph 8(a) had

been established. He pointed out that the respondent himself did not say in evidence that the article alleged the commission of a fraud by him or the office-bearers. But he does refer to the allegation of fraud in the article and goes on to say that it does not refer to the earlier irregularity involving about three and a half lakhs of rupees during the period 1958 to 1959, because no date is mentioned in the article. As such he was affected by the article as one of the office-bearers of the association at the time of publication. In fact he said that several people questioned him about the article and he felt badly humiliated over it. The other witness Gunapala, called by the respondent was a member of the association and said that the funds of the association were in the charge of the office-bearers so that they would naturally be held responsible for any alleged fraud. That would be how any reasonable man would understand the article on reading it. It has already been shown that the defamatory words in the article refer to the office-bearers of whom the respondent was one and there is extrinsic evidence of witnesses that they understood the allegation in the article in that sense and questioned the respondent.

Learned Counsel for the appellant sought to distinguish the cases of *Lewis and another v. Daily Telegraph Ltd.,* and *Same v. Associated Newspapers Ltd.,* (2) on that ground that the news item while referring to an inquiry of the affairs of R. Co., also named the Chairman of the Company as Lewis. But in the present case the number of the office-bearers of the association was so small that the imputation of fraud against the office-bearers would attach to each and every one of them, including the respondent who was the Vice-President at the time.

In my view the innuendo set out in paragraph 8 (a) of the plaint has been established and the learned District Judge was not in error in coming to that finding.

It now remains to determine whether the defence of qualified privilege which was the only defence relied on by counsel for the appellant at the hearing of the appeal is entitled to succeed.

Learned Counsel for the appellant submitted that the learned District Judge erred in rejecting that defence. In order to seek the protection of privilege, the appellant must establish that it made the communication in the discharge of a duty, and that the persons to whom it was made had a duty or interest to receive it. " It is not necessary that the defendant should be under a legal duty to make the communication; it is sufficient that he is under a moral or social duty to make it. The person to whom the communication is made must have a similar duty or a legitimate interest to receive it. 'This reciprocity is essential' ". *McKerron Law of Delict* 6th Edition page 178.

In the case of *Toogood v. Spyring* (5) page 193 referred to by *Gatley on Libel and Slander* 5th Edition page 192, Parke B stated the law as follows: " In general an action lies for the malicious publication of statements which are false in fact, and injurious to the character of another and the law considers such publication as malicious, *unless it is fairly made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned.* In such cases the occasion prevents the inference of malice which the law draws from unauthorised communications, and affords a qualified defence depending on the absence of actual malice ".

In the present case there is no evidence of malice or animosity on the part of the appellant against the respondent.

In *Adam v. Ward* (6) Lord Atkinson said: " A privileged occasion is . . . an occasion where the person who makes a communication has an interest, or a duty, legal, social or moral to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential ". See also *Halsbury, Laws of England 3rd Edition* Vol. 24 page 56.

" No difficulty can arise in determining whether the defendant was under a legal duty to speak. But it is often a delicate matter

to determine whether he was under a moral or social duty to do so. The question can be decided upon a consideration of all the circumstances of the case . . . Perhaps the best test is that applied by Lindley LJ in *Stuart v. Bell* (7). 'Would the great mass of right-minded men in the position of the defendant have considered it their duty to speak? ' The test, it will be observed, is objective, not subjective. The question is not whether the defendant believed that a duty existed but whether a duty in fact existed ". *McKerron Law of Delict* 6th Edition, page 179.

In the present case there clearly was no legal duty cast on the defendant to publish the article. The question then is whether it had a moral duty to do so and whether the public to whom it was published had a corresponding interest to receive it. The interest, must be a legitimate interest, i.e., one which the Courts will recognize and protect, and not one which springs from mere idle curiosity only. The word 'interest' is not used in any technical sense. It is used in the broadest popular sense, as when we say that a man is 'interested' in knowing a fact — not interested in it as a matter of gossip or curiosity, but as a matter of substance apart from its mere quality as news. So long as the interest is of tangible a nature that for the common convenience and welfare of society it is expedient to protect it, it will come within the rule. *Gatley* ibid 195.

Dr. Amerasinghe in his book on Defamation and other injuries, states at page 101, " It has been stated that the broad basis of the defence of privilege is not the convenience of an individual or of a class but the common convenience and welfare of society or the general interests of society ". See also *Perera v. Peiris* (8).

Learned Queen's Counsel for the respondent contended that the Government Railway Daily Paid Employees' Benevolent Association was a private society and not a public body or institution. At the time of the publication of the article it was not even incorporated and later in 1965 when it was incorporated, it did not become a public corporation. It was an association of daily paid workers and at the time, not under the control of the

Railway Department or Government. The membership consisted of only 5,000 persons and the public at large could have had no interest in its affairs. Applying the objective test enunciated by Lindley LJ In *Stuart v. Bell* (7), as to whether the great mass of right-minded men in the position of the defendant would have considered it their duty to speak, the answer must be in the negative. Learned Queen's Counsel also submitted that the appellant has not produced a copy of the petition sent to the Prime Minister and other Ministers alleging a fraud in order to establish that it honestly and reasonably believed that it was under a duty to make the communication. The appellant has also given no evidence at all at the trial.

The news item may at the most have been of interest to the members of the association, and if the defamatory statements in the impugned article had been communicated only to them it may be that the defence of privilege may have succeeded. The members consisted only of 5,000 persons and constituted just a small section of the public. The general public, consisting of the readers of the newspaper to whom it was published, as a news item, would certainly have had no interest in the affairs of this insignificant society.

A case in point is *Chapman v. Ellesmere and others* (9), where the Stewards of a Jockey Club after inquiry issued a statement that they were satisfied that a drug had been administered to a horse, which had won a race at Kempton Park, and that they " disqualified the horse for this race and for all future races under their rules and warned the trainer (the plaintiff) of the horse off Newmarket Heath ". By a rule of the Rules of Racing, the Stewards were given the power of granting and withdrawing or suspending trainers' licences, of warning any person off the turf, and of publishing their decisions in the " Racing Calendar ". The licence granted by them to the plaintiff provided that it was subject to the Rules of Racing. The defendants as agents of the Stewards, communicated the statement to news agencies, who circulated it to newspapers, one of which, also a defendant, published it. The statement was also published in the " Racing

Calendar ". The plaintiff claimed damages against the Stewards and the other defendants for libel, pleading that the statement meant, and was understood to mean that he himself had drugged the horse. It was held that the publication in the " Racing Calendar " was not excessive and as it had been accepted as part of the terms and conditions on which the plaintiff held his licence, it was made on a privileged occasion. But in regard to the Times newspaper, it was held that there was no duty on the Times newspaper to publish it to their readers and the publication in the Times was therefore not on a privileged occasion. Racing was only a sectional interest of the public and consequently the duty was only to inform a part of the public. It was on this basis and the fact that plaintiff had accepted his licence subject to the publication of matters of interest and importance in the " Racing Calendar ", that the publication in that newssheet alone was privileged.

In the present case too, only a section of the public, namely the members of the Benevolent Society would have been interested in the publication of the article but as it had been published to the readers of 'Davasa' newspaper, who constituted the general public, the occasion was not privileged.

Learned Counsel for the appellant contended that the members of the Benevolent Society were public servants employed in the Railway Department and the affairs of their association were a matter of public interest. He referred to the paragraphs in the news article which referred to a petition being sent to the Prime Minister, a complaint being made to the Ministry of Communication and Transport and a letter being sent to the Minister of Finance and submitted that the article was published not in order to injure the reputation of the respondent but in order to expose the inaction on the part of the authorities to hold an inquiry. But the association was not a public institution over which the government had any control. Counsel also pointed out that these complaints ultimately resulted in the incorporation of the society. But that took place much later in 1965 and even then the society did not become a government-

controlled corporation. It was not a public institution in which the public could be said to have a legitimate interest in knowing about its affairs and consequently the appellant had no moral or social duty to bring any alleged irregularity or fraud committed in the Society to the notice of the general public.

The case of *Webb v. Times Publishing Co., Ltd.* (10) cited by learned Counsel for the appellant is distinguishable from the facts of the present case. That was a case where a fair and accurate contemporaneous report of foreign judicial proceedings was published by a newspaper in English and the subject-matter of the report was held to be of legitimate and proper interest to the English public as being a matter connected with the administration of justice in England.

In my view the association was not a public body and the appellant had no moral or social duty to publish the article Pla because the affairs of the Society were of no concern or interest to the general public. The occasion was therefore not privileged and the defence of privilege must fail.

I accordingly dismiss the appeal with costs.

TAMBIAH, J. — I agree.

Appeal dismissed.