

[IN THE PRIVY COUNCIL]

1963 Present: Viscount Radcliffe, Lord Evershed, Lord Morris of Borth-y-Gest, Lord Devlin, and Sir Kenneth Gresson

N. W. DE COSTA, Appellant, and THE TIMES OF CEYLON LTD.
and another, Respondents

PRIVY COUNCIL APPEAL NO. 45 OF 1962

S. C. 325—D. C. Colombo, 38683/M

Defamation—Publications in newspaper—Animus injuriandi—Burden of proof—Innuendos—Plea of justification—Plea of fair comment—Proof.

In an action to recover damages for publishing defamatory matter in a newspaper, *animus injuriandi* "has in the generality of cases to be inferred from the words and the occasion on which and the context and the circumstances in which they are used. If the existence of *animus injuriandi* is shown or can be presumed to exist the defence may seek to negative it by raising a plea of justification. In order to establish that plea it is not enough to show that the words complained of are true: it must be shown that their publication was in the public interest or for the public benefit. A further defence that may be raised is that of fair comment. This necessitates establishing that the facts upon which the comment is based are true, that the comment is in reality comment and is fair and *bona fide*, and that the comment is based on a matter of public interest."

As a first cause of action it was averred by the plaintiff that the defendants published (a) that "the people" of Kotte were questioning why the appellant, when he was an assistant teacher at a certain Buddhist school at Kotte, carried on a "powerful campaign" requesting students and their parents not to pay facilities fees, but enforced the payment of such fees when he became Principal; there occurred also the sentence:—"The staff is opposed to the Principal; excepting one third all the rest of the students are opposed to him". (b) that the appellant set the children against the then Vice-Principal and induced them to write slogans against him on the school buildings.

Held, that the passages in question could not, in the circumstances of the present case, be characterised as unjustifiable resurrections of past events no longer qualifying to attract public interest. The passages were true in substance and the pleas of justification and fair comment were available to the defendants.

The second cause of action related to certain publications which appeared in the same newspaper on the 8th and 11th May 1956 after the appellant had retired from the post of Principal on 7th April 1956. The passages contained the suggestions (a) that the appellant had retired under the provisions of Rule 6c of the Teachers Pension Regulations by falsely pretending that he could not teach in Sinhalese and (b) that it was as a result of some improper means to which he had been a party that he had been able to retire. There was sufficient evidence, however, from which it could be reasonably inferred that the appellant's application to retire under the provisions of the Teachers Pension Regulations were based upon his claim that the imperfections in his knowledge of Sinhalese were such that he lacked a proper competence to give instruction in that language. Likewise, if the words giving rise to the second cause of action were regarded as containing a statement of fact that his permission to retire was the result of employing improper means, the truth of such statement was not established.

Held, that neither the defence of justification nor that of fair comment was established in regard to the second cause of action.

10—LXV

R 12806-1,355 (10/63)

APPPEAL from a judgment of the Supreme Court reported in (1959) 62 N. L. R. 265.

Appellant appeared in person.

E. F. N. Gratiaen, Q.C., with *R. K. Handoo* and *Mrs. Q. A. Novis*, for the respondents.

Cur. adv. vult.

July 9, 1963. [*Delivered by LORD MORRIS OF BORTH-Y-GEST*]—

This is an appeal from the judgment and decree of the Supreme Court of Ceylon, dated the 23rd October 1959 dismissing with costs the appeal of the appellant from the judgment and decree of the District Court of Colombo dated the 10th June 1957 which dismissed with costs an action for damages which the appellant brought against the respondents. At all material times the first respondents owned and the second respondent edited a Ceylon newspaper known as "Lankadipa". The appellant alleged that on the 5th and 23rd December 1955, on the 3rd January 1956 and on the 8th and 11th May 1956 the respondents published certain defamatory matter of and concerning him in the newspaper. The respondents admitted the publications and put forward pleas of justification and fair comment.

From 1934 down to April 1955 the appellant was a teacher in the school called Ananda Sastralaya at Kotte. The appellant was an old boy of the school and as the learned District Judge held he was "a person of the locality". For a period prior to July 1953 he acted as Principal during the absence on leave owing to ill-health of Mr. Wickremesinghe the Principal. In June 1953 Mr. Alagiyawanna who was then in the Education Department was appointed Vice-Principal and after that date he acted as Principal. As a result certain difficulties arose. The learned District Judge held that although Mr. Alagiyawanna was well qualified and well suited for the post and was a sincere and honest man the appointment was perhaps in the circumstances an unhappy one. It was deeply resented by the appellant. Mr. Kularatne was then the general manager of Buddhist Schools of the Colombo Buddhist Theosophical Society and it was he who invited and appointed Mr. Alagiyawanna to occupy the post of Vice-Principal—a new post which Mr. Kularatne then created. Dr. Adikaram, who wielded influence in the sphere of Buddhist education and who later succeeded Mr. Kularatne as Manager of the Buddhist Theosophical Society, felt that the appointment was unfair to the appellant and attempted to dissuade Mr. Alagiyawanna from accepting. Mr. Kularatne accompanied Mr. Alagiyawanna to the school on the 1st July 1953 in order to instal him in his new office and informed the appellant that Mr. Alagiyawanna would act as Principal

from that date. The appellant indicated resolute opposition and the conflict of testimony as to the unhappy events of that occasion was resolved by the learned District Judge against the appellant.

In the period that followed there were two circumstances in connection with the school which call for mention viz. (a) there appeared certain writings on the walls of the school in the form of "anti-Alagiyawanna" slogans (b) there were failures in some cases to pay "facilities' fees".

Before referring to the passages in the newspaper which gave rise to the litigation it is necessary to refer to certain events of general importance and to mention further facts in connection with the appellant's career.

After the achievement of Independence in 1948 the Government took steps to put its new educational policy into effect. It was recognised however that some teachers would be unable to give instruction in either Sinhalese or Tamil and a scheme was evolved under which teachers who were so unable could, subject to certain conditions, exercise an option to retire with compensation for loss of career. On the 12th September 1954 the appellant, who was then on pay leave in order to study in America, applied for permission to retire under one of the provisions (Rule 6b) of the Teachers Pension Regulations. He stated that he did not consider himself competent to give instruction in Sinhalese. He added that, because he felt that the turn over to Swabasha was not in the interests of the country, he could not conscientiously do his best as a teacher. He further stated that he would not in 1934 have embarked upon the teaching profession if the new policy could then have been foreseen. By a letter dated the 25th November 1954 he was informed that his application was refused. That letter was signed, not personally by, but by someone for the Director of Education. Their Lordships reject a submission advanced by the appellant that the letter should for that reason be regarded as having no effect. The appellant appealed from the decision to the Minister of Finance who was Mr. Jayewardene. He did so by letter dated the 14th March 1955 giving as his reason for delay the fact that he had been on leave in America. He addressed a letter to the Minister of Education dated the 21st April 1955 asking him to support the appeal. The Minister of Finance rejected his appeal. The appellant was so informed in June 1955. In the meantime (i.e. after the 14th March and before June) he had become Principal of the school. In his judgment the learned District Court Judge recorded that "in 1955 Dr. Adikaram beat Mr. Kularatne in a contest to become the manager of the Buddhist Theosophical Society. The principalship of the Ananda Sastralaya fell vacant and on 1st April 1955 the plaintiff who was then in America was appointed principal". By letter dated the 28th September 1955 addressed to the Director of Education the appellant again applied for permission to retire. He did so under Rule 6c of the Teachers Pension Regulations which Rule had by then been added to the Regulations. For present purposes it is sufficient to state that Rule 6c has reference to teaching in higher classes than those to which

Rule 6b applies. The appellant's application was based as before upon his feeling that he did not consider himself competent to give instruction in Sinhalese. In the course of his letter he stated :

" I have had no good background in Sinhalese as indicated by the fact that for my first public examination, E.S.L.C. 1930, I did not offer Sinhalese.

As a second language was compulsory I had to offer Sinhalese for the S.S.C., but I got through the examination only in my second attempt.

Subjects for my Intermediate Examination were Mathematics, Botany and English. I studied for my degree in Indo-Aryan in the University of London reading and writing the subjects in the Roman Script.

I find it extremely difficult to continue in the profession under the Government's Swabhasa Policy."

By a letter dated the 29th November 1955 from the Director of Education (which was signed for him) the appellant was informed that he could not be permitted to retire under the provisions of Rule 6c.

In January 1956 the appellant was given a medical certificate which recommended an absence from duty for a month and during January, February and March 1956 he was given permission by Dr. Adikaram to be away from the school. By letter dated the 10th February 1956 the appellant appealed to the Minister of Finance against the decision of the Director of Education refusing him permission to retire under the Teachers Pension Regulations. In the course of his letter he stated :—

" In the whole of my career as a teacher I have never been taking a class in Sinhalese.

I have no good background in the subject as indicated by the fact that for my first public examination (E.S.L.C. 1930) I have not offered Sinhalese.

My subjects for the Intermediate were English, Mathematics and Botany and for my degree in Indo-Aryan I studied in the University of London—under a German Professor who had no knowledge in Sinhalese—reading and writing the languages in the Roman script.

May I submit that I am convinced that the turnover to Swabasha is detrimental to the progress of the country and as such I am unable to do my best in my profession.

My present position requires a very sound knowledge in Sinhalese. Other than teaching much public speaking and correspondence has to be done by a Principal of an Assisted School to collect funds, to put up buildings etc."

On the 19th February Parliament was dissolved. In the ensuing election the appellant was a supporter of and a worker for the U.N.P. party. As members of that party Mr. Anandatissa de Alwis and Mr. Jayewardene (the Minister of Finance) contested respectively the Kotte and the Horana seats. The appellant issued a pamphlet in the Kotte division in support of the U.N.P. cause and candidate. He had also been seen driving a car at Horana which carried on it a poster bearing a photograph of Mr. Jayewardene.

In connection with the appellant's appeal to the Minister of Finance the Director of Education addressed a letter dated the 7th March 1956 to the Permanent Secretary to the Ministry of Education in the course of which he stated :—

“ 2. Mr. Costa admits that he passed the S.S.C. Examination with Sinhalese as a subject. He also passed the B.A. Hons. Indo-Aryan Examination offering Pali and Sanskrit. He is also the author of a Text Book in Botany produced in Sinhalese. It is for this reason that he was not allowed to retire under Rule 6c.

3. In fairness to Mr. Costa, it must also be stated that although he had passed in Sinhalese at the S.S.C. Examination he has not, in his career, taken a class of students in Sinhalese. It is correct to state that when he studied for the Indo-Aryan Hons. Examination in London his Professor was a German who used the Roman Script in teaching him Pali and Sanskrit. He also maintains that the text book in Botany was prepared by him over a period of years in English but that he had obtained the assistance of Messrs. K. C. Weerasinghe and Sunil Wijewickrema to do the book in Sinhalese. This point is made by him in the final paragraph of the introductory note to his book which is sent herewith for reference and return.

4. I should like to state that Mr. Costa has interviewed me on several occasions and has pointed out to me his utter inability to cope with the responsibilities, which devolve on him as the Principal of a Secondary School as a result of his imperfect knowledge of the Sinhalese Language.”

On about the 5th April 1956 it became known that the election had resulted in the defeat of the U.N.P. party with the consequence that there would be a change of government. There was later a new cabinet. On the 7th April the Minister of Finance (Mr. Jayewardene), who had himself been defeated in the election, went to his office in order to attend to outstanding matters which awaited him. He had to discharge his duties as Minister until the 15th April. Amongst other matters there were some 145 appeals which he had to consider before he relinquished office. In dealing with these he relied entirely on the minutes made by officials in his Ministry and in the Ministry of Education. Amongst the appeals with which he dealt was that of the appellant. He allowed the appeal and sanctioned the retirement of the appellant. That was

on the 7th April 1956. The learned District Judge accepted his evidence to the effect that he did not bring his own mind to bear on the question of the appellant's retirement. The learned Judge said that he did not for a moment believe that Mr. Jayewardene's action was prompted by any improper motives. The learned Judge did however consider that those who were responsible for advising the Minister had at that point of time completely changed their minds or had been persuaded to do so even though no fresh material was placed before them.

The passages in the newspaper in respect of which the appellant instituted his action fall into two groups. These were referred to in the District Court and in the Supreme Court as the first and second causes of action respectively and for that reason (even though strictly speaking each passage, if defamatory, would ground a separate cause of action) a similar mode of reference may be adopted.

The first cause of action relates to the publication of:—

“ (1) a news item in the issue of the ‘Lankadipa’ dated 5th December, 1955, under the heading ‘Kasu Kusu’, and

(2) two letters in the issues of the ‘Lankadipa’ on 23rd December, 1955, and 3rd January, 1956, respectively.

The news item in question (P1 of 5th December, 1955) is as follows:—

“The people of Kotte question as to why the assistant teacher who carried on a powerful campaign requesting the children of a certain Buddhist school in Kotte not to pay facilities fees is enforcing the payment (of facilities fees) on becoming the Principal”.

The letter published on 23rd December, 1955, is from one Mahindapala Boteju (P2) but the complaint is only in respect of the following passages contained therein:—

(a) “It was when the present Principal was an assistant teacher in the same school that the children were encouraged not to pay and led astray.

(b) The fact that black stains are sprinkled on the glory that was of the school can be seen from the talks that go on at the (road) junctions here. The staff is opposed to the Principal; excepting one third, all the rest of the students are opposed to him”.

The letter of 3rd January, 1956, (P3) is written by one Kirtisiri Ameratunga and the passage complained of in the letter is as follows:—

“As a past student I know that it was the present Principal who made the students disobedient and act as rebels. Everyone who was at the Sastralaya during the time of the Principalship of Mr. S. Wickremasinghe knows that it was the present Principal who set the children against the then Vice-Principal Mr. Alagiyawanna who is now the Principal of Sri Sumangala Vidyalaya, Panadura.”

“To obstruct the work of the school the present Principal who was then an assistant teacher induced not only the students but also their parents not to pay facilities fees. It is not a secret as to who got the students to write the anti-Alagiyawanna slogans on the school buildings.”

The appellant pleaded that these statements involved the following *innuendos* :—

- (1) that the appellant when an assistant teacher misused his position as teacher by inciting the students and their parents not to pay facilities fees and that in so doing he was actuated by unworthy and dishonest motives :
- (2) that the appellant secured his appointment as Principal by these unfair and unworthy methods :
- (3) that the appellant was directly responsible for the students of the said school becoming disobedient and rebellious :
- (4) that the appellant by these actions had forfeited the confidence of the people of Kotte, his own staff and pupils and was, therefore, not a fit and proper person to be either a teacher or a Principal ; and
- (5) that the appellant by his actions has brought dishonour on the name of the school. ”

In respect of that cause of action the appellant claimed a sum of Rs. 50,000.

The second cause of action relates to certain publications which appeared in the same newspaper after the appellant had retired from the post of Principal.

“The first of these publications appeared in the ‘Lankadipa’ of 8th May, 1956, as a news item. It is as follows :—

‘Mr. N. W. de Costa, Principal, Ananda Sastralaya, Kotte, has retired from the post of Principal. He who has a degree in Indo-Aryan has retired on full pension under the regulations for retirement due to his inability to teach in Sinhalese. The Sinhalese book titled “Udbhida Vidyawa” is a book written by him. In a short time he will be leaving for America to teach English, ’

“The second publication is a letter written by one K. Jayasekera and published in the issue of the ‘Lankadipa’ of 11th May, 1956. The passages complained of are as follows :—

‘It was published in the Lankadipa that Mr. N. W. de Costa, Principal, Ananda Sastralaya, Kotte, retired on the ground of inability to teach in Sinhalese. He has an external degree in Indo-Aryan of

the University of London. The book titled "Udbhida Vidyawa" which is accepted by the Education Publications Board is written by him. But it is a wonder to the people of Kotte and Horana as to how he retired with full pay. Though he did not go to school for the whole of last term, he worked hard at Kotte and at Horana for a certain political party. Further, he issued leaflets under his name. It is not difficult for the Education Minister and the Finance Minister of the new Government to know how he could retire during the time of the election though his previous attempts to retire were unsuccessful."

The innuendo in regard to those publications which was pleaded by the appellant was as follows:—

"The Plaintiff although well qualified in Sinhalese had by falsely pretending he could not teach in Sinhalese and by employing other corrupt means obtained the permission of the Government to retire from the teaching service."

In respect of that cause of action the appellant claimed a sum of Rs. 60,000.

The respondents pleaded justification, qualified privilege, fair comment and absence of *animus injuriandi*.

A large number of issues were framed at the trial. The learned District Judge found numerous issues of fact in favour of the respondents and dismissed the action. The appeal in the Supreme Court was heard by Basnayake C.J., Palle J. and Sinnetamby J. By a majority judgment (Basnayake C.J. dissenting) the appeal was dismissed and the judgment of the learned District Judge was affirmed. The learned Chief Justice considered that the appellant was entitled to succeed in his claim and would have awarded him Rs. 5,000 damages.

The law which must be applied in approaching the issues which arise in this appeal is the law of defamation in Roman-Dutch law as applied in Ceylon. The existence of *animus injuriandi* is therefore an essential basis of the cause of action. As Basnayake C.J. pointed out in his judgment defamation is a species of *injuria* and *injuria litteris* is committed when a person has assailed the reputation of another by publishing to a third person matter intended to bring him into contempt ridicule or hatred *animo injuriandi*: and *animus injuriandi* being a state of mind has in the generality of cases to be inferred from the words and the occasion on which and the context and the circumstances in which they are used. If the existence of *animus injuriandi* is shown or can be presumed to exist the defence may seek to negative it by raising a plea of justification. In order to establish that plea it is not enough to show that the words complained of are true: it must be shown that their publication was in the public interest or for the public benefit. A further

defence that may be raised is that of fair comment. This necessitates establishing that the facts upon which the comment is based are true, that the comment is in reality comment and is fair and *bona fide*, and that the comment is made on a matter of public interest.

—Their Lordships think that it will be convenient to deal separately with the two causes of action. The first cause of action relates to the publications of the 5th December 1955, 23rd December 1955, and the 3rd January 1956. Their Lordships consider that the ordinary and natural meaning of the language used is clear. There does not appear to be any necessity for ascribing secondary meanings. In agreement with the view expressed by Sinnetamby J. their Lordships consider that there is nothing in the passages which suggests to the average reader that the appellant secured his appointment as Principal by inciting students and parents not to pay facilities fees.

The decision in regard to this first cause of action will, their Lordships think, mainly depend upon the question as to whether certain facts were established. The passages are really founded and built upon two assertions of fact. One of these concerns facilities fees. The passages first assert that whereas when the appellant was an assistant teacher he carried on a campaign requesting students and their parents not to pay facilities fees when he became Principal he enforced the payment of facilities fees. If there were such requests the use of the word "campaign" lacks importance. Nor did the description of the campaign as a powerful one add to the significance of the words. The other assertion contained in the passages is that the appellant set the children against the then Vice-Principal Mr. Alagiyawanna and induced them to write "Anti-Alagiyawanna" slogans on the school buildings. Assuming that these two serious assertions or statements of fact were shown to have been true their Lordships consider that the affairs of the school were of such concern and interest that publication of the passages was in the public interest or for the public benefit. Furthermore if some words in or parts of the passages were by way of comment on the facts set out in the passages the comments appear to their Lordships to have been fair and *bona fide* and in the public interest. Their Lordships do not consider that in the circumstances of this case the passages are to be characterised as unjustifiable resurrections of past events no longer qualifying to attract public interest. The vital issue as to this part of the case is whether the two statements were true. The learned District Court Judge, advantaged as he was by seeing and hearing the witnesses, has found that the statements were true. He heard four young men and he stated in his judgment that "according to them it was the plaintiff who was responsible for the anti-Alagiyawanna slogans and it was he who instigated students to refrain from paying facilities fees". Each one of the four young men did not testify in regard to both those matters but both those matters were established if the testimony of the young men was acceptable. The learned District Judge

in his Judgment examined carefully the criticisms of their evidence which Counsel had advanced but held that he could not agree that the witnesses were unworthy of credit. He expressly stated that they impressed him favourably and that he accepted their evidence in preference to that of the appellant. Their Lordships observe that one of the witnesses (Dharmakirti) stated that the appellant had asked him not to pay facilities fees and in his presence had likewise asked other students and had asked him to go and persuade other students and further had given as a reason for not paying that a part of the fees went to Mr. Alagiyawanna.

In the passage which was published on the 23rd December 1955 there occurs the sentence :—“ The staff is opposed to the Principal ; excepting one third all the rest of the students are opposed to him ”. There was evidence which suggested that there were factions on the school staff and which showed that the troubles concerning admission cards for the examinations were discussed in Kotte and caused distress among the students. Though it was not shown that all the staff were opposed to the appellant and though the stated percentage of student opposition was not proved the sting of the passages complained of in the first cause of action did not rest in the sentence quoted. If it was shown that when the appellant was a teacher he carried on a campaign requesting students and their parents not to pay facilities fees, and that when he was Principal he enforced the payment of such fees, and if it was shown that the appellant had set the children against Mr. Alagiyawanna and had induced them to write “ Anti-Alagiyawanna ” slogans on the school buildings, their Lordships consider that the appellant could not succeed in respect of the first cause of action. There were conflicts of evidence at the trial but there was evidence which, if accepted by the learned Judge, warranted him in reaching the conclusions of fact which he expressed. Their Lordships see no basis for disturbing them.

In regard to the publication of the 5th December 1955 their Lordships have noted that the opening words are : “ The people of Kotte question as to why . . . ”. It was urged that the evidence did not establish that the matters referred to were the talk of Kotte. Here is an example of words which on one view record a statement of fact and on another view express a comment. If the words are recording fact their Lordships would not regard the words as stating that all the people of Kotte were making the matters referred to their topic of conversation. If the view is held that fact was being recorded there was some evidence that the matter of admission cards was “ the talk of Kotte ” and there was some evidence that “ school affairs were being discussed at junctions and on the road ”. Their Lordships consider however that, more naturally interpreted, the words do no more than express a comment on a matter which was claimed to be of public interest to the people of Kotte. The comment (if founded on facts truly stated), that someone who as an assistant teacher at a school in Kotte had requested children not to

pay facilities fees was after becoming Principal enforcing their payment was in their Lordships' view one that it was fair and legitimate to express in Kotte.

In regard to the first cause of action their Lordships have not been persuaded that the conclusions reached by the learned Judge at the trial and by the majority in the Supreme Court were erroneous.

Their Lordships now pass to consider the second cause of action which relates to the publications of the 8th and 11th May 1956. The learned Judge at the trial held that the words did bear the innuendo which was pleaded. The view of the majority in the Supreme Court was that "while the passages themselves convey to the minds of the reader the suggestion that the plaintiff retired by falsely pretending that he could not teach in Sinhalese though well qualified in that language" the passages did not necessarily suggest that corrupt means were employed in obtaining permission to retire. They added that the passages did not "suggest corruption as such unless it be limited to the fact that the plaintiff was able to retire by working for a "certain political party". Their conclusion was that the final passage of the words published on the 11th May certainly suggested that the appellant was able to retire by improper means though they thought that the words were mainly directed against the retiring Finance Minister.

Their Lordships consider that the passages do contain the suggestions (a) that the appellant had retired by falsely pretending that he could not teach in Sinhalese and (b) that it was as a result of some improper means to which he had been a party that he had been able to retire. (The writer of the letter of the 11th May clearly intended so to suggest.)

In so far as the words contain statements of fact to such effects their Lordships do not consider that justification was established. In so far as the words contain comment it becomes necessary to consider whether there was the requisite basis for establishing the plea of fair comment.

Certain additional facts must now be mentioned. The appellant has a degree in Indo-Aryan. It is a degree in the University of London. It was not however shown that the obtaining of such a degree involved the passing of an examination in Sinhalese or that the appellant offered Sinhalese as a subject for his degree. Nor was it shown that someone who possessed a degree in Indo-Aryan was competent to give instruction through the medium of Sinhalese to the classes designated in paragraphs 6b and 6c of the Teachers Pension Regulations. In studying for his degree in Indo-Aryan in the University of London he had read and written the subjects in the Roman Script. The appellant was the author of a book entitled "Udbhida Vidyawa". The evidence showed that in so far as it could be said that the book was written by the appellant in Sinhalese that was only achieved with the assistance of two friends.

(The appellant's version was that he prepared the book in English and that it was translated into Sinhalese by the two friends.) The book was not accepted by the Educational Publications Board.

There was evidence which established that for many purposes the appellant had a measure of competence in Sinhalese. In his judgment in the Supreme Court Sinnetamby J. said: "It is also significant that throughout his efforts to retire on the ground that he could not teach in Sinhalese the plaintiff concealed the fact that he passed the London Matriculation in Sinhalese which was calculated to create the wrong impression that he passed in Sinhalese only in the S.S.C. and that too at the second attempt, *vide* D.17; actually, though he failed the entire examination in his first attempt, he passed in Sinhalese". It is to be observed however that the appellant did not assert that he had no understanding of Sinhalese. His applications to retire under the provisions of the Teachers Pension Regulations were not based upon any such suggestion: they were based upon his claim that the imperfections in his knowledge of Sinhalese were such that he lacked a proper competence to give instruction in that language.

If the words giving rise to the second cause of action are regarded as containing a statement of fact that the appellant had falsely pretended that he could not teach in Sinhalese their Lordships consider that the evidence fails to establish the truth of any such statement. Likewise if the words are regarded as containing a statement of fact that his permission to retire was the result of employing improper means the truth of such statement was not established. The suggestion which the words conveyed was that an application which lacked merit was acceded to as the reward for political service rendered to the Minister. Their Lordships consider that the evidence did not warrant this suggestion. It was not shown that the Minister had knowledge of the political activities—such as they were—of the appellant. Quite apart from this the finding of the learned Judge at the trial was that the Minister in reaching his decision relied entirely on the advice of his officials. The part played by the appellant in the election did not have any effect so far as the fate of his appeal to the Minister of Finance was concerned.

It remains for their Lordships to consider whether to the extent that the words which are the basis of the second cause of action can be regarded as comments the defence of fair comment can avail the respondents. Some of the words may be regarded as introducing or denoting comment. By way of example it may be said that the words "But it is a wonder to the people of Kotte and Horana as to . . ." are introductory to and indicative of comment. To the extent that the words which are the basis of the second cause of action suggest comments—the comments are undoubtedly adverse to the appellant. One comment, if comment it be, is that the appellant had been allowed to retire on account of inability to teach in Sinhalese in spite of the fact that he was really quite

competent to teach in that language. Another is that though he was able to teach in Sinhalese and had not been successful in his application to retire yet by working hard during the election he had secured a reversal of a previous decision. Their Lordships consider that these comments could not in any event be justified as being fair unless they were founded on facts truly stated which gave adequate support for them. Some of the statements which were made were incorrect. It was stated that the appellant had retired "with full pay". The writer of the letter was completely misinformed as to this and he took no step to verify the statement that he made. The appellant did not retire with full pay. That was a particularly serious mis-statement. The statement that the book "Udbhida Vidyawa" was accepted by the Educational Publications Board was also incorrect. The statement that the book was written by the appellant did not convey the information which in the context and in the circumstances was relevant and which called for mention i.e. that its appearance in Sinhalese was only made possible by reason of the assistance which the appellant had received. Apart however from these considerations their Lordships are of the opinion that the material was quite inadequate as the foundation of the serious and damaging comments (assuming that the passages can be regarded as comments) that were made. The facts do not support the serious critical comment to the effect that the appellant's claim to retire on account of inability to teach in Sinhalese was based on false pretences. Neither do the facts give support for a comment that the permission given to the appellant to retire was improperly secured as the reward of partisan political service.

Whichever approach is followed their Lordships consider that neither the defence of justification nor that of fair comment was established. Their Lordships consider that the appellant was entitled to succeed in respect of the second cause of action. In considering the amount which should be awarded their Lordships have paid great heed to the assessment made by the learned Chief Justice, while remembering that his figure was awarded on the basis that the appellant should succeed on the first as well as on the second cause of action. Having regard to the content of the defamation covered by the second cause of action which involved what were undoubtedly the more serious allegations their Lordships consider that an award of Rs. 5,000 should be appropriate to the case.

Their Lordships will humbly advise Her Majesty that the appeal should be allowed, that the judgments of the District Court and of the Supreme Court should be set aside and that judgment should be entered for the appellant for Rs. 5,000. The respondents must pay the appellant one half of his costs of the trial and such costs as he incurred in the Supreme Court and before their Lordships' Board.

Appeal allowed.