

APPENDIX.

WALTER vs. POWRIE.

Defamatory words amounting to libel.

P., a journalist, published in his paper a letter in which it was said of W., Chairman of Committees in the Cape Legislative Assembly, that "Since Mr. Molteno has guaranteed him a salary in Parliament he votes blindly on every question (om het bosch)." Held, in an action for libel by W. against P., that the above words when taken with their context amounted to a libel.

This was an action for damages on account of an alleged libel.

The plaintiff was a member of the Legislative Assembly of this Colony, and had been appointed on the accession to office of the then Premier, Mr. Molteno, to the post of Chairman of Committees in the said Legislative Assembly. The defendant was the proprietor of *The Mossel Bay Advertiser*. In this paper he published in October 1876 a letter containing the following passage:—"The behaviour of Mr. Walter, which is noticed by us only, endangers his chance of being returned at the next election, for since Mr. Molteno has guaranteed him a salary in Parliament, he votes blindly on every question (*om et bosch*), and is at present more a servant of the House of Assembly than our representative." This was the alleged defamatory statement upon which plaintiff based his action for libel.

Before taking action in the matter plaintiff demanded an apology of defendant. The latter first asked for delay in order that he might consult the writer of the letter complained of, and afterwards stated that the writer of the letter and defendant himself failed to see that the plaintiff had been libelled in it.

Plaintiff in his declaration alleged that the passage com-

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plained of imputed to him—1st, that, having been appointed to a salaried office at the instance of the Premier, he had corruptly, and in disregard of the interests of his Parliamentary constituents and his duties as a member of the House of Assembly, voted on the matters which came before that House, not according to his own judgment, but as the Premier directed him; 2ndly, that in his conduct in Parliament since he accepted the said office he had behaved himself more as a paid member of the House of Assembly than as an independent member thereof; and 3rdly, that by reason of his dishonourable and corrupt conduct, and the degraded position which he occupied, plaintiff had endangered his chance of being re-elected as a member of the House of Assembly. The words "*om het bosch*" were stated in the declaration to mean "*round the bush*." Damages were laid at the sum of £5000.

Defendant in the first place pleaded the general issue; in a second plea he alleged that the words complained of were a translation from an article or letter which had appeared in Dutch in the *Volksblad*, a newspaper published at Cape Town, and that this translation had been inserted by defendant in his paper without malice and without any intention to injure the plaintiff. Plaintiff took exception to the second plea, and it was afterwards withdrawn. Defendant did not attempt to prove the truth of the words complained of.

Jacobs, A.-G. (with him *Uppington*), for plaintiff. Any one reading the paragraph complained of would understand it to mean that in consequence of plaintiff having been appointed Chairman of Committees, with a fixed salary, he did just what Mr. Molteno liked. It was an insinuation that his conduct was the result of his having got the office, and that his chance of re-election was endangered by this conduct. With the allegation that he neglects his duties as a representative must be coupled the insinuation that he is guaranteed a salary, and therefore votes blindly. *Folkard* (p. 156, 4th edition) lays it down that words must be taken in that sense which is most natural and obvious, and that they must not be interpreted in a strained sense. Though it is perfectly legitimate to write to the papers with a view to securing the future rejection of a member of Parliament with whom one is dissatisfied, yet if the words used for the

purpose be false and malicious an injury will have been committed.

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[DE VILLIERS, C.J.:—At page 244 of *Folkard on Libel* (4th edition) a distinction is drawn in the following terms: "The patronage of Parliament as bestowed on supporters of the ministry is matter of public interest, and may be the subject of fair comment. But if the writer assert that a certain member of Parliament has bargained to sell his vote upon a corrupt contract, or that a member would not have voted or spoken as he did, but for a corrupt understanding that he should receive a reward, such would not be excusable as fair comment." But does the present case come within this distinction?]

Yes. The tenor of the remarks is to show that plaintiff is not discharging his duty *bonâ fide* as a member, but is influenced by the paid office which he holds, which causes him to vote not according to his conscience, but blindly; in short, that he does not give honest votes. The public conduct of public men may be freely discussed provided they be not accused of dishonest conduct in the discharge of a public duty. The letter containing the libel refers to a Divisional Council question. Hence the present is not a case of an editor commenting upon the public conduct of a public man, but is a mere private matter.

Cole, Q.C. (with him *Maasdorp*), for defendant:—It was no more libellous to say of plaintiff that, after he had been appointed Chairman of Committees, he was more the servant of the House of Assembly than of his constituents, than it would be to say the same of the Speaker of that House. By the very nature of his duties the Chairman of Committees is precluded from taking any active part in debates, &c. In England no important constituency would care to be represented by the Speaker of the House of Commons. The expression "round the bush" seems to mean that plaintiff has adopted no particular party principle. *Voet* (47, 10, 20) lays it down that whenever words alleged to be libellous are ambiguous in their meaning, and are capable of a double sense, the most innocent construction must be put upon them by the Court. It is quite possible to read the paragraph in question without gathering from it any charge

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of corruption; where then is the libel? Plaintiff holds an office of profit, and the innuendo is that he pays a little too much attention thereto.

Jacobs, in reply:—What we complain of is the insinuation that plaintiff, in consequence of having a salary guaranteed to him, votes blindly.

The Registrar and the Interpreter of the Court were consulted by the Court as to the meaning of the expression "*om het bosch*"; the former was of opinion that it meant "insincerely"; the latter stated that he took it to signify "insincerely," unconscientiously," and perhaps "with ulterior purposes."

Cur. adv. vult.

Postea (May 15th),—

DE VILLIERS, C.J.:—This is an action for damages for an alleged libel published by the defendant in the *Mossel Bay Advertiser* on October 4, 1876, defendant being editor and publisher of that paper. The declaration complains that the plaintiff is a member of the House of Assembly of this Colony, and that the defendant has published and printed of him a false, scandalous and malicious series of defamatory expressions, in English and in Dutch. The words complained of are as follows:—"The behaviour of Mr. Walter, which is noticed by us only, endangers his chance of being returned at the next election; for since Mr. Molteno has guaranteed him a salary in Parliament, he votes blindly on every question (*om het bosch*), and is at present more a servant of the House of Assembly than our representative." The question for the Court now to consider is whether these expressions, or any one of them, constitute a libel for which the plaintiff is entitled to recover damages from the defendant. I do not for a moment feel inclined to encourage the bringing of actions of this kind; at the same time, when a case does come before the Court, and it is shown that the words used are defamatory, the Court is bound to award some damages to the plaintiff. No doubt greater latitude is allowed to newspapers in criticising the acts of public men than would be allowed in the case of private persons, but at the same time no writer can be allowed to go beyond the

limits of fair comment or criticism. He has no right to impute even to a person holding a public position that he is actuated in his public conduct by base, sordid, or other such unworthy motives unless the imputation is founded upon fact. If the charge is true, it would be clearly for the public interest that it should be publicly known, and the person making it would not be liable. In the present case no attempt has been made to prove that the Premier had guaranteed the plaintiff a salary in Parliament, and the imputation, therefore, that there had been a corrupt bargain of a pecuniary guarantee on the one side and blind political support on the other falls to the ground. The libel is certainly not a very gross one, and the language used is very near the confines of what is allowable and what is not. I am not prepared, however, to dissent from the view of my brethren, that the words are actionable, and that some damages must be awarded to the plaintiff, but I think that under the circumstances the sum of £5, being little more than nominal damages, with costs of the action, will be sufficient.

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DENYSSEN, J.:—I am of the same opinion, and I think that plaintiff's character will not in the least suffer from this attack. The paragraph complained of is clearly libellous, and the words "votes blindly," &c., evidently mean that plaintiff closes his eyes to the interests of his constituents and votes only with those whose favour he wishes to secure in Parliament, that is, that the words "*om et bosch*," which have been translated as "dodgingly" or manœuvringly," mean that plaintiff votes contrary to his real convictions.

FITZPATRICK, J., concurred.

[Plaintiff's Attorneys, FAIRBRIDGE, ARDERNE & SCANLEN.]
[Defendant's Attorney, C. C. DE VILLIERS.]
