

IRVINE vs. IMPEY & Co.

Libel.—Journalist.—Fair and proper comment.

A journalist in an article in his paper stated of one I., a member of the Legislative Assembly of the Colony, that he seemed "to have entered Parliament under the verdant misconception that a man whose money bags are full of ill-gotten gains is more highly esteemed than one who has lost his all in the service of his country." Held, on action being brought by I., that the whole of the article must be read together, and that when so read, it was clear that the expression "ill-gotten gains" merely represented the writer's opinion as to the morality of certain transactions which I. was alleged to have had with the natives, and did not amount to an imputation against I. of dishonourable or dishonest motives.

This was an action brought by John James Irvine, a member of the Legislative Assembly of this Colony, against George Impey and William Richards, proprietors of the *Eastern Province Herald*, a newspaper printed and published at Port Elizabeth, for the sum of £1000 as damages for an alleged libel published by them in the said newspaper. The action was founded on the following statement contained in a leading article which appeared in the *Eastern Province Herald* of the 9th September, 1879:—"Mr. Irvine has mistaken his vocation and seems to have entered Parliament under the verdant misconception that a man whose money bags are full of ill-gotten gains is more highly esteemed than one who has lost his all in the service of his country. For our part we would rather be poor with Mr. Sprigg than rich with his antagonist, and any member who can flourish his riches in the face of a deliberative assembly and sneer at the honourable poverty of his intellectual superiors is not fit to have a seat in the House, where brains and not money are the sole passport to eminence. Possibly King William's Town will show its opinion of Mr. Irvine at the next election." The plaintiff contended that this passage amounted to an accusation against him of having obtained his wealth by dishonest and dishonourable means. The defendants, *inter alia*, pleaded that the words complained of

1880.
May 20.
" 25.
Irvine vs.
Impey & Co.

1880.
 May 20.
 „ 25.
 —
 Irvine vs.
 Impey & Co.

formed part of an article published in the *Eastern Province Herald*, were not used with any intention to injure the plaintiff, and, when taken in connection with the other parts of the said article, did not have the meaning that the plaintiff was the possessor of gains dishonestly or dishonourably acquired. A further plea was, that, before and at the time of the publication of the words complained of, plaintiff was a member of the Legislative Assembly of this Colony, and that the said words were part of an article published in the said newspaper, which article was a fair and *bonâ fide* comment upon the several matters therein contained and referred to, and upon the plaintiff as such member of Parliament as aforesaid, and was published by the defendants as such comment without any malicious intent. The article referred to a debate in Parliament, in the course of which Mr. Sprigg, then prime minister, accused, erroneously, as was afterwards proved, plaintiff of improperly selling guns to the natives. Plaintiff retorted in his reply “that he was not a bankrupt farmer.”

Leonard (with him *Giddy*), for plaintiff. *Folkard* (4th ed. p. 164) states that what must be considered is whether the tendency of the matter published is injurious. The tendency of the words complained of is injurious inasmuch as the insinuation is that plaintiff has been guilty of gun smuggling. *Walter vs. The Mossel Bay Advertiser* * supports plaintiff's contention.

[DE VILLIERS, C.J.:—*Mr. Innes*, are you prepared on behalf of your clients to withdraw the allegation that plaintiff has obtained any improper advantage by selling guns to the natives?

Innes:—Yes, my Lord.]

Leonard:—Plaintiff is bound to proceed in this manner.

Innes, for defendants:—No imputation of misconduct has been shown in this case. In order to obtain a verdict the existence of such an imputation should have been proved. (*Folkard*, 4th ed. p. 444, *Broome vs. Gosden*, 1 C. B. 728.) The *Eastern Province Herald* as a paper advocating dis-

* See Appendix to this volume, p. 191.

armament spoke of the gains obtained from selling guns to the natives, just as a Good Templar would speak of the wealth obtained by some publican. The charge contained in the article was one of a public character and constituted a fair comment. (*Folkard*, 4th ed. p. 219, *Watson vs. Walter*, L. R., 4 Q. B., p. 73.)

1880.
May 20.
" 25.
Irvine vs.
Impey & Co.

Cur. adv. vult.

Postea (May 25th),—

DE VILLIERS, C.J.:—This is an action for damages for an alleged libel published in the defendants' newspaper, the *Eastern Province Herald*, at Port Elizabeth. The words complained of which are alleged to contain the libel, are the following:—"Mr. Irvine has mistaken his vocation and seems to have entered Parliament under the verdant misconception that a man whose maney bags are full of ill-gotten gains is more highly esteemed than one who has lost his all in the service of his country," and the meaning attached to these words by the plaintiff is, that the plaintiff was the possessor of ill-gotten gains, which he had acquired dishonestly or dishonourably. Now, if the plaintiff's object in this case is to prove that he has done nothing dishonest or dishonourable in any gun transaction, he has entirely succeeded to the satisfaction of the Court. The evidence has clearly established that he has never been engaged in any illicit or any dishonourable transaction in selling guns. So far from his having made money in selling guns to the natives, he has only sold nineteen guns during five years, and the total profit made by him was about four per cent. of the total profits of his business. But the important question in this case is, whether the words used by the defendants are such as to constitute a libel. The plaintiff has relied upon the words "ill-gotten gains," and says the meaning he attached to them was that he had been engaged in some illicit transactions in guns. I have read this article with the greatest anxiety, in order to see if I could discover these motives, or these dishonest dealings, imputed to the plaintiff; but I confess I could not. The article cannot be read by selecting one particular passage, but the whole of this article must be taken together. In a previous passage

1880.
 May 20.
 " 25.
 Irvine vs.
 Impey & Co.

in this article there are the following words. It is a quotation made from the speech by the Colonial Secretary in the House of Assembly, and in that speech the Colonial Secretary is said to have spoken as follows:—"Whether the members of the Ministry or the honourable member for King William's Town and his friends are poorer or richer, I do not know, nor do I care to enquire. I will say this, however, that the occupants of the Treasury Bench have none of them acquired any wealth by selling guns to the natives, as the member for King William's Town has done." Then entering into the subject the writer of the article says:—"Mr. Irvine has mistaken his vocation and seems to have entered Parliament under the verdant misconception that a man whose money bags are full of ill-gotten gains is more highly esteemed" and so on. Clearly, therefore, the writer, being under the impression that Mr. Irvine had made money by selling guns to the natives, comes to the conclusion that he has acquired ill-gotten gains. All this proves, however, is, that the writer disapproves of a man making money in this way, and the Court cannot preclude writers from expressing their opinions on matters of this kind. It a matter of great public interest, and any writer may come to the conclusion that gains obtained by selling guns to the natives are ill-gotten. The case of *Walter vs. The Mossel Bay Advertiser* was cited as one in point; but if it is carefully considered it will be found to have no real bearing on the present case. That case went as far as any case ever went. The conclusion the Court there arrived at was, that the plaintiff had been charged with voting against his conscience and against his convictions, with the sordid object of obtaining some pecuniary advantages, the Chairmanship of Committees. The Court held that, in the words there used, dishonourable and dishonest motives were imputed to the plaintiff, and gave damages. In the case now before the Court I have failed to find that the writer charges the plaintiff with any dishonourable or dishonest motives. All he charges him with is getting wealth by selling guns to the natives, and, in doing so, filling his money bags with ill-gotten gains. Now, it seems that Mr. Irvine did not fill his money bags, but it is in evidence that he acquired money by selling guns to the natives. Having gained his object by showing that he had never any

illicit transactions with regard to the guns, Mr. Irvine might fairly have accepted the statement of the defendants' counsel that no dishonest motives were imputed. That course was not, however, adopted, and I do not see that I have any option but to give judgment for the defendants, with costs.

1880.
May 20.
" 25.
Irvine vs.
Impey & Co.

DWYER and SMITH, J.J., concurred.

[Attorneys for Plaintiff, FAIRBRIDGE, ARDERNE, & SCANLEN.]
[Attorneys for Defendants, J. & H. REID & NEPHEW.]

DE VILLIERS vs. VAN ZYL AND ANOTHER.

Measure of damages in an action for trespass.—Animals feræ naturæ.

Z. trespassed upon the land of V. and drove off from it and appropriated certain young wild ostriches which had been reared upon it. Held, on action for trespass being brought by V., that in an action for trespass the Court is not bound to award merely the amount of the pecuniary loss caused by the actual trespass, but may take into consideration all the circumstances of the case, and that therefore, though the ostriches being feræ naturæ had not been the property of V., it was justified in making their value the measure of the damages awarded.

This was an action for damages sustained by reason of trespass.

Plaintiffs alleged that they and another were the joint owners of a certain farm; that in February 1879 the defendants A. van Zyl and G. van Zyl had trespassed upon the said farm, damaged the grass and herbage thereon, and taken possession of and driven away fourteen young wild ostriches which were grazing upon the farm; and that by reason thereof plaintiffs had suffered damage to the amount of £150.

Defendants A. and G. van Zyl admitted that the farm was owned as alleged by plaintiffs, and that on the date in question six wild ostriches had been captured by A. van

1880.
June 1.
" 2.
De Villiers vs.
Van Zyl &
Another.