CHAPTER 12

Honest Belief in Truth as a Defence

THE DEFENCE of justification (truth) is not satisfied by merely proving that the defendant honestly believed the statement to be true. He must prove objectively that the statement was in fact true. This suggestion has been particularly pressed in the United Kingdom so as to make the position of newspapers more favourable. A report published by Justice[1], proposed that the press should be given a new qualified privilege for statements based upon information which might reasonably be believed to be true, provided that the defendant published a reasonable statement from the plaintiff by way of explanation (if so requested) and (if necessary) an apology.

But, outside Fleet Street, the *Report of Justice* has not been well received (*a*) in Parliament,[2] or (*b*) in academic writing,[3] or (*c*) by the Faulks Committee.[4]

Commenting on the recommendation of the Justice Committee,[5] Lord Lloyd whose view is of particular interest stated:

> Far and away the most important of these recommendations is that which proposes a new form of qualified privilege. What the Committee recommended is that there should be a statutory defence of qualified privilege for newspapers in respect of the publication of matters of public interest, where the publication is made in good faith without malice and is based upon evidence which might reasonably be believed to be true, provided that the defendant has published upon request a reasonable letter or statement by way of explanation or contradication and withdrawn any inaccurate statements with an apology if appropriate to the circumstances. This is an extremely far-reaching proposal, for it means that the Press would now be entitled to put out untrue statements about matters of public concern or half-truths which could be justified in subsequent legal proceedings merely on the footing that they were based upon evidence which might reasonably be believed to be true. Evidence for this purpose

---

1. Justice, *The Law and the Press* (1965) [Joint Working Party of Justice and British Committee of International Press Institute]. See also Salmond & Heuston, *Torts* 166, para 63 (1981).
2. 274 *H L. Debates*, Col. 1371.
3. Lord Lloyd, The Law and the Press, 19 *Current Legal Problems* 43 (1966); Heuston, Recent Developments in the Law of Defamation, (1966) 1 *Irish Jurist* 247 (1966).
4. *Faulks Committee Report*, Cmd. 5909,para 211 (1975).
5. *Supra* note 1 at 38, para 119.

would presumably not mean evidence which would satisfy a court of law, but which would be regarded as deserving of credence by the ordinary reasonable man, and might cover rumours which were being widely spread about, and which seemingly had a semblance of justification. One has only to think of the appalling situation of a plaintiff who is faced with statements of this kind in a newspaper and who, if this proposal became law, would be forced to fight a libel action on the basis that the defendant newspaper would not be bound in any way to prove the truth of the assertions, but would be able to subject the plaintiff in public proceedings to a barrage of all the rumours and scraps of information and other material which its great resources could lay its hands on for the purpose of trying to satisfy a jury that this was evidence which, though not true, might reasonably be believed to be true. Even if the plaintiff came through such an ordeal with flying colours, is it not virtually inevitable that, having been publicly pilloried by this welter of rumour and suspicion, his reputation would inevitably suffer, notwithstanding the successful outcome of the proceedings, on the footing that "there is no smoke without fire," quite apart from the anguish that he will have been subjected to by having to expose himself to proceedings fought in this way?

Let us just consider, for example, the case of a person in a public position about whom there are widespread rumours, entirely untrue, that he is living with a mistress, or is a homosexual. There are obviously circumstances where it would be arguable that these may be matters the publication of which would be of public interest. But a plaintiff in such a situation, who desired to put a stop to newspapers giving immense public currency to such unfounded rumours, would find himself obliged to launch proceedings and then contemplate the newspaper exerting every possible resource to bring out every episode or incident in his private life from which a jury might conceivably be persuaded that here was evidence upon which the rumoured tales might reasonably be believed to be true. The perils to which a plaintiff would be exposed by having to cope with a possible defence of this sort, if ventilated and exploited by all the resources which a vast national newspaper could command, leads one to ask what is the real foundation upon which the case is sought to be made by the Committee in favour of conferring so tremendous a new "freedom" to assail public or private reputations.

It is interesting to note in this connection that at least the more serious-minded organs of the Press appear to have had some reservations about this new proposal. For instance, *The Observer* asked this question: "Can it be right that a law should sanction spreading untruths, however much the author has tried to be truthful?"[6] and *The Times*[7] 'after remarking

6. June 37, 1965
7. June 25, 1965.

that the concept of a defence of qualified privilege is fundamentally sound, goes on to point out that the tentative definition in the Report would have to be sharpened if it were not to open the door to mischievous publication of[8] "semi-facts".[8]

There is very great force in the comment offered by Lord Lloyd, and it appears unnecessary to offer further criticism of the *Justice* proposal,

8. Lord Lloyd, *supra* note 3 at 53-55.