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FISHER v. RAVEN. RAVEN v. FISHER.

LORD HODSON. My Lords, I also agree. My noble and learned friend, Lord Devlin, who is unable to be present today has asked me to say that he also agrees.

First appeal allowed.
Second appeal dismissed.

Solicitors: *Jas. H. Fellowes & Son; Sharpe, Pritchard & Co. for T. Hambrey Jones, Chelmsford.*

F. C.

[HOUSE OF LORDS.]

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RUBBER IMPROVEMENT LTD. AND ANOTHER . . . . . APPELLANTS;
AND
DAILY TELEGRAPH LTD. . . . . RESPONDENTS.

SAME . . . . . APPELLANTS;
AND
ASSOCIATED NEWSPAPERS LTD. . . . RESPONDENTS.

[ON APPEAL FROM LEWIS *v.* DAILY TELEGRAPH LTD.]

Libel and Slander—Justification—Suspicion of crime—Statement that Fraud Squad inquiring into affairs of limited company—Ordinary meaning of words admitted to be defamatory, but justified—Proof of police inquiry in progress at date of report—Whether justification — Whether words reasonably capable of meaning plaintiffs guilty of fraud.

Libel and Slander—Pleadings—Innuendo—Not supported by extrinsic facts—Duty to withdraw unproved innuendo from jury—Not applicable if innuendo relying only on words used—Whether implied meaning should be pleaded—R.S.C., Ord. 19, *r.* 6 (2).

Libel and Slander — Damages for libel — Assessment by jury — Libel of limited company and chairman — No plea of special damage — No proof of general loss of business — High award of damages — Considerations justifying interference with award by appellate court—Tax position relevant to question of excessive or inadequate award of damages—Similar libels in two newspapers—Defamation Act, 1952 (15 *&* 16 *Geo.* 6 *&* 1 *Eliz.* 2, *c.* 66), *s.* 12.

Damages—Tax element—Libel—Application of Gourley's case.

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* *Present*: LORD REID, LORD JENKINS, LORD MORRIS OF BORTH-Y-GEST, LORD HODSON and LORD DEVLIN.

On December 23, 1958, two national newspapers published on their front pages paragraphs headed respectively "Inquiry on "Firm by City Police" and "Fraud Squad Probe Firm," which stated in substance that the police were inquiring into the affairs of a limited company of which one J. L. was chairman. He issued a statement denying that such inquiry was being made and he and the company issued writs against the owners of each newspaper, the actions of the chairman and the company being later consolidated against each newspaper. The statements of claim alleged that the words were defamatory in their ordinary and natural meaning. By paragraph 4 it was pleaded in each case that the words meant and were understood to mean that the plaintiffs had been guilty of or were suspected by the police of being guilty of fraud or dishonesty. Particulars given pursuant to R.S.C., Ord. 19, r. 6 (2), did not support the meaning pleaded in paragraph 4 by extrinsic facts but were inferences from the words complained of. No plea of special damage was included. The defendants did not deny that the words in their ordinary meaning were defamatory but pleaded justification, namely, that it was true that on December 23, 1958, the police were inquiring into the affairs of the company of which J. L. was chairman. They denied that the words meant or were capable of meaning that the plaintiffs were guilty of or suspected of fraud.

At the trials before Salmon J. and juries, which took place successively, evidence was given for both parties which showed that on December 23, 1958, the police, at the instigation of a shareholder, were inquiring into the affairs of the company of which J. L. was chairman. No evidence of financial loss as a result of the publication was put before the jury, though considerable loss was suggested by J. L.

At the conclusion of the evidence and in the absence of the jury the judge rejected a submission for the defendants that the innuendo meaning should be withdrawn from the jury, since it was unsupported by any extrinsic facts, and that only the ordinary meaning, admittedly defamatory but justified, should be put to the jury. He directed the jury that the words could bear the meaning alleged in the innuendo and that they might properly so find. He did not point out the absence of any cogent evidence as to financial loss; and he left to the jury only two questions, namely, (1) whether they found for the plaintiffs or for the defendants, and (2) if for the plaintiffs, what sums of damages. The jury in the first action returned verdicts of £25,000 damages for the chairman and £75,000 for the company; and in the second action two days later, in which there were factors which a jury might be entitled to take into account as aggravating the damages, a different jury awarded the chairman £17,000 damages and the company £100,000:—

Held, (1) that in a libel action the judge must rule whether the words are capable of bearing each of the defamatory meanings, if there be more than one, put forward by the plaintiff, whether expressly pleaded or not, if such meaning is alleged to be inferred

from the natural and ordinary meaning of the words used (post, pp. 258, 259, 260, 265, 286).

(2) That (Lord Morris dissenting) from the words in question in their natural and ordinary meaning an ordinary man without special knowledge would not have inferred that the appellant was guilty of fraud and accordingly the jury should have been directed that they were not capable of bearing that particular meaning (post, pp. 259, 260, 274, 286).

Per Lord Morris. Where no innuendo is pleaded, it is not essential for the plaintiff to plead what he says are the implied meanings of the words (post, p. 265).

Per Lord Hodson. It is desirable that the pleader should allege in his statement of claim what the words in their natural and ordinary meaning convey provided he makes it clear that he is not relying upon a true innuendo which gives a separate cause of action and requires a separate verdict from the jury (post, p. 273).

Per Lord Devlin. The ordinary meaning of words and the meaning enlarged by innuendo give rise to separate causes of action, but there has also been a divergence between the popular and the legal meaning of "innuendo." The natural and ordinary meaning of words for the purposes of defamation is not their natural and ordinary meaning for other purposes of law. There must be added to the implications which a court is prepared to make as a matter of construction all such insinuations and innuendos as could reasonably be read into them by the ordinary man. Consequently, there must be three paragraphs in a statement of claim: (1) a paragraph setting out the defamatory words; (2) if they do not speak for themselves, a paragraph setting out those innuendoes and indirect meanings going beyond their literal meaning, which the pleader claims to be inherent in them; and (3) if there is the necessary material a paragraph pleading a secondary meaning or legal innuendo supported by particulars under R.S.C., Ord. 19, r. 6 (2) (post, pp. 279, 280).

Capital and Counties Bank Ltd. v. *George Henty & Sons* (1882) 7 App.Cas. 741, H.L.; *Grubb* v. *Bristol United Press Ltd.* [1963] 1 Q.B. 309; [1962] 3 W.L.R. 25; [1962] 2 All E.R. 380, C.A., and *Sim* v. *Stretch* (1936) 52 T.L.R. 669; [1936] 2 All E.R. 1237, C.A. applied.

Loughans v. *Odhams Press Ltd.* [1963] 1 Q.B. 299; [1962] 2 W.L.R. 692; [1962] 1 All E.R. 404, C.A. distinguished.

Turner v. *Metro-Goldwyn-Mayer Pictures Ltd.* (1950) 66 T.L.R. (Pt. 1) 342; [1950] 1 All E.R. 449, H.L.; *Cookson* v. *Harewood* [1932] 2 K.B. 478n., C.A.; and *Stubbs Ltd.* v. *Russell* [1913] A.C. 386; 29 T.L.R. 409, H.L., considered.

(3) That the damages awarded in each case were excessive.

In such a case, pursuant to section 12 of the Defamation Act, 1952, each jury should be directed to consider how far the damage suffered by the plaintiffs can reasonably be attributed solely to the libel with which they are concerned, and how far it ought to be regarded as the joint result of the two libels, and must bear in

mind that the plaintiffs ought not to be compensated twice for the same loss (post, p. 261).

In assessing damages for loss of profit arising from libel the jury should be directed to make an allowance for the obligation to pay income tax or surtax out of it had it been earned (post, p. 262).

British Transport Commission v. *Gourley* [1956] A.C. 185; [1956] 2 W.L.R. 41; [1955] 3 All E.R. 796, H.L. applied.

(4) That, accordingly, a new trial of each action should be ordered.

Decision of the Court of Appeal [1963] 1 Q.B. 340; [1962] 3 W.L.R. 50; [1962] 2 All E.R. 698, C.A. affirmed.

APPEAL from the Court of Appeal (Holroyd Pearce and Davies L.JJ. and Havers J.).

The first appeal was made by leave of the Court of Appeal by the appellants, Rubber Improvement Ltd. and John Lewis, who were the plaintiffs in two consolidated actions, from an order of the Court of Appeal dated April 4, 1962, whereby the verdicts given and the judgments entered for the respective plaintiffs against the defendants, Daily Telegraph Ltd., the present respondents, for £100,000 (being as to £75,000 for Rubber Improvement Ltd. and as to £25,000 for John Lewis) on the trial of these actions before Salmon J. and a jury on July 18 and 19, 1961, were wholly set aside and a new trial ordered. The second appeal was made by leave of the Court of Appeal by the same appellants, who were the plaintiffs in two other consolidated actions, from an order of the Court of Appeal dated April 4, 1962, whereby the verdicts given and the judgments entered for the respective plaintiffs against the defendants, Associated Newspapers Ltd., the present respondents, for £117,000 (being as to £100,000 for Rubber Improvements Ltd. and as to £17,000 for John Lewis) on the trial of these actions before Salmon J. and a different jury on July 20 and 21, 1961, were wholly set aside and a new trial ordered.

Daily Telegraph Ltd. were the owners of the "Daily Tele-" graph" and Associated Newspapers Ltd. were the owners of the "Daily Mail." On December 23, 1958, they published respectively on their front pages the following reports. The report in the "Daily Telegraph" read:

"INQUIRY ON FIRM BY CITY POLICE

"Daily Telegraph Reporter.

"Officers of the City of London Fraud Squad are inquiring "into the affairs of Rubber Improvement Ltd. and its subsidiary

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" companies. The investigation was requested after criticisms " of the chairman's statement and the accounts by a shareholder " at the recent company meeting.

" The chairman of the company, which has an authorised " capital of £1 million, is Mr. John Lewis, former Socialist M.P. " for Bolton."

The report in the " Daily Mail " read:

" FRAUD SQUAD PROBE FIRM

" The City Fraud Squad, under Superintendent Francis Lea, " are inquiring into the affairs of Rubber Improvement Ltd. " Chairman of the £4,000,000 group, whose shares have dropped " from 22s. last year to 7s. 4½d. yesterday, is Mr. John Lewis, " former Socialist M.P.

" The company specialises in flexible rubber conveyor belting " designed for the National Coal Board."

The facts leading up to and surrounding the publication differed to some extent in respect of the two publications, but the general effect was the same.

On the same day as the publication Rubber Improvement Ltd. and John Lewis began four actions by writ claiming damages for libel against the two newspaper companies, each of the plaintiffs suing each of the newspaper companies. Subsequently the two actions against Daily Telegraph Ltd. were consolidated, as were the two actions against Associated Newspapers Ltd.

The relevant parts of the pleadings in the actions relating to the " Daily Telegraph " were as follows:

By paragraph 1 of the statement of claim of Rubber Improvement Ltd.: " The plaintiffs are and were at all material times " a public company carrying on a large and extensive business " both on its own account and through subsidiary companies " mainly in the plastics and rubber industries."

By paragraph 2 it was pleaded that the defendants were proprietors of the " Daily Telegraph."

By paragraph 3 it was pleaded that the defendants " falsely " and maliciously printed and published " the words complained of.

Paragraph 4 was as follows: " By the said words the defen- " dants meant and were understood to mean that the affairs of " the plaintiffs and/or its subsidiaries were conducted fraudulently " or dishonestly or in such a way that the police suspected that " their affairs were so conducted.

" Particulars pursuant to R.S.C., Order 19, Rule 6 (2)

" (1) The plaintiffs repeat paragraph 1 hereof.

" (2) The plaintiffs will rely on the tone and heading of the " said article.

" (3) It is generally known that the City Fraud Squad investi- " gate serious cases of company fraud."

(The provisions of Ord. 19, r. 6 (2) require a plaintiff who alleges that words have been used in a defamatory sense other than their ordinary meaning to give particulars of the facts and matters on which he relies in support of that sense.)

In the statement of claim of John Lewis paragraph 1 set out that he was chairman and managing director of Rubber Improvement Ltd., and paragraphs 2 and 3 were identical with the corresponding paragraphs in the statement of claim of that company.

Paragraph 4 was as follows: " By the said words the defen- " dants meant and were understood to mean that the plaintiff " had been guilty or was suspected by the police of having been " guilty of fraud or dishonesty in connection with the affairs of " the said company and/or its subsidiaries and/or that he had " caused or permitted the affairs of the said company and/or " its subsidiaries to be conducted fraudulently or dishonestly or " in such a way that the police suspected that the affairs of the " said company and/or its subsidiaries had been so conducted " and/or that the plaintiff was unfit to hold either of his said " offices."

The particulars were identical with those in the company's statement of claim with the addition: " (4) the plaintiff will rely " on section 188 of the Companies Act, 1948."

The defences to the two actions were identical. By paragraph 1, paragraphs 1 and 2 of the statement of claim were admitted. By paragraph 2 publication was admitted.

By paragraph 3: " The said words in their natural and " ordinary meaning are true in substance and in fact."

By paragraph 4: " The said words do not bear and were not " understood to bear and are incapable of bearing the meanings " attributed to them in paragraph 4 of the statement of claim."

By paragraph 5: " If the said words bear such meanings " which is denied the defendants say in mitigation of damages " that on the day after the publication complained of they " published a statement by Mr. John Lewis expressing his view

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" of the facts. In any event the plaintiffs have claimed damages " for the same or a similar libel from Associated Newspapers " Ltd."

The plaintiffs made a request for particulars of the justification which had been pleaded. This matter was dealt with before the master in chambers, then on appeal to the judge in chambers, and then on appeal in the Court of Appeal. The master made the limited order that particulars should be given of the request for an investigation, stating by whom such request was made and when and the nature of the investigation requested. The judge allowed an appeal from that order, which he varied by ordering particulars of the facts and matters relied upon in support of the allegation that the words in their natural and ordinary meaning were true in substance and in fact. It was agreed that in the Court of Appeal counsel for the " Daily Telegraph " made it clear that justification was only being asserted in regard to the limited fact that officers of the City of London Fraud Squad had (after being requested as stated) inquired into the affairs of the company and its subsidiary companies. Upon that being made clear the Court of Appeal set aside the order of the judge. Accordingly, the limited order made by the master was restored.

The pleadings in the actions relating to the " Daily Mail " were substantially similar.

After the evidence was concluded at the trial of the first actions a submission was made on July 19, 1961, in the absence of the jury that the innuendo should in each case be withdrawn from the jury. There was no note as to the terms of the submission that was made, but it was the recollection of counsel who made it that it was not limited to a submission that the two paragraphs should be withdrawn because the particulars did not support the innuendo or were not proved, but that it extended to a submission that, apart from any question of an innuendo, the words themselves in their ordinary meaning were incapable of bearing the meanings set out by the plaintiffs in those paragraphs. The judge's ruling was as follows:

Salmon J.: " I am inclined to think that no innuendo here " was necessary. I can well understand, however, that where " there is any doubt about the matter the learned pleader very " properly puts in an innuendo. As counsel for the defendants " candidly admits, that cannot do the defendants any harm, " because it forewarns them of what the plaintiff is going to

" submit the words mean. Where there is no innuendo, it may " in some cases be difficult for a defendant to know. Even " although the innuendo may strictly be unnecessary, I do not " think that in the exercise of my discretion I ought to strike " it out; nor need it be amended. I can only say that the " practice was at one time always to plead an innuendo. The " practice has altered, fortunately, so that innuendoes now are " rarely pleaded, but there may be cases—and I agree with Mr. " Duncan that this is one of them—where there may be a doubt " whether it is necessary to plead an innuendo. Where there is " such a doubt, there can be no harm in pleading it. It certainly " cannot hurt the defendants. I do not accept the argument " that by pleading an innuendo one is necessarily alleging " affirmatively that the words in their ordinary and natural " meaning mean something other than that which is pleaded in " the innuendo. I do not propose to make any order on the " application of the defendants.

" Mr. Faulks and Mr. Milmo, while the jury are coming back " I may say that I propose only to leave one question to the jury: " Do you find for the plaintiff or for the defendant, and, if for the " plaintiff, how much? I will hear either of you if you wish to " urge me to leave a series of questions to the jury."

Mr. Faulks: " No, my Lord; I am quite in accord with what " your Lordship says."

Mr. Milmo: " My Lord, so am I."

Salmon J., having read the statement in the " Daily Tele- " graph " to the jury, said in his summing-up: " This case very " largely depends on what in your view those words mean. " The question is, what would they have meant to the ordinary " man and woman when he or she read them on the morning " of December 23? It has been said that the ordinary man, " with his cup of tea in one hand, reading this paper, does " not read it with a suspicious, tortuous and sinister mind. " That is very true, you may think. On the other hand, " it has been said that when the ordinary man spreads his " paper out on the table and reads it with his cup of tea " in one hand, he does not necessarily hold the scales of " justice in delicate equipoise in the other. You have got to " think of the ordinary man. How would the ordinary man " understand this? The two views which have been canvassed " before you are these: Mr. Faulks has said: Well, the ordinary " man is not very suspicious; he would just regard it as a piece of

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"intelligence, the police are looking into it, and it would not "really produce any other effect upon his mind. Mr. Milmo "says: Well, the ordinary man seeing this 'City Police. Officers "'of the City of London Fraud Squad are inquiring into the "'affairs of Rubber Improvement Ltd.'—the ordinary man, not "being any more suspicious than his neighbour, would immedi- "ately say to himself, says Mr. Milmo—either he would say to "himself: 'There is fraud here, or the police would not be look- "'ing into it' or, he would say to himself: 'At any rate, there "'is enough in this for the police to suspect that there is fraud.' "I cannot really help you. Those are the two rival contentions. "It is for you to say what it means. When you read the news- "papers, what would you have thought when you read that? "You see, the only way you can get at what the ordinary man "and woman think is by getting a jury of 12 people together, "who are ordinary men and women, and asking them what they "would have thought. You may ask yourselves, what would "people in the City think if they woke up one morning and read "that in the paper? Members of the jury, anything is defama- "tory which tends to lower you in the esteem of right thinking "people. But if anyone reading this thought—any ordinary "reasonable man reading this thought—that it meant that Mr. "Lewis had been guilty of fraud; or that the police suspected that "Mr. Lewis had been guilty of fraud; or that he had allowed the "affairs of the company to be conducted fraudulently or dis- "honestly; or the police suspected that he had, would that tend "to lower him in the esteem of right thinking people? And as "far as the company is concerned, it is suggested by the plaintiffs "that these words mean to the ordinary man that the affairs of "the company and its subsidiaries were conducted fraudulently "or dishonestly; or that the police suspected that they were so "conducted. That is what is said by the plaintiffs these words "would convey to the ordinary man and woman, and that the "ordinary man and woman would not merely say to themselves: "'Oh well, it is a very interesting piece of intelligence: the police "'are inquiring into it. There may be a routine examination. "'We do not draw any conclusions at all.' As I say, consider "that you get up one morning in a perfectly reasonable frame of "mind; you are not feeling suspicious particularly, but you have "a look at that: what would it mean to you?" The judge then went on to deal with the issue of justification and to direct the jury that if they thought that the meaning conveyed was no more than that the police were making an inquiry, then

they had to consider whether the defendants had proved that an inquiry had been made. The judge reminded the jury of the evidence and said: "Does that constitute an inquiry into "these matters by the police? You may think it does: you may "think it does not."

At the second trial there was no submission that the innuendo should be struck out. Salmon J. left the alleged innuendo meanings to the jury as possible, natural and ordinary meanings of the words complained of.

Helenus Milmo Q.C. and *P. Colin Duncan* for the appellants.

Neville Faulks Q.C. and *Hugh Davidson* for the respondents, Daily Telegraph Ltd.

Neville Faulks Q.C. and *David Hirst* for the respondents, Associated Newspapers Ltd.

Helenus Milmo Q.C. The essential question is whether these words are reasonably capable of meaning that there has been fraud on the part of the appellants. If it be ruled that such words mean that the plaintiff was suspected of having committed fraud or has so conducted his affairs as to give rise to suspicion of fraud or to justify a police inquiry, that can only be justified by proving that he has committed fraud. Paragraph 4 of the statement of claim in John Lewis's case said that the words meant that he "had been guilty or was suspected . . . of having been "guilty of fraud." Justification by the defendants involved the same onus of proof. A defendant who has said, "X is suspected "of murder," cannot justify by showing that someone does suspect him. There can be no distinction between the two allegations.

The question libel or no libel must be left to the jury, but the court must rule whether the words are capable of a defamatory meaning. Here the jury found that the words conveyed more than their literal meaning.

The principles applicable here are to be found in Gatley on Libel and Slander, 5th ed., p. 155, para. 255. The questions what words are reasonably capable of meaning and what a defendant must justify are closely connected. As to the position when a defamatory statement is put forward by way of rumour or report only, see Salmond on Torts, 13th ed., p. 358. (The statement is the same in the 10th edition at p. 392.) If one says that X is suspected of theft it is not enough to put forward the

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facts that could make a reasonable man suspect him. The statements (a) "X is suspected of fraud" and (b) "X is alleged to "have been guilty of fraud" are both defamatory of X but they are only so because, and to the extent which, they suggest actual guilt of fraud. Neither statement asserts in terms that X is guilty; both recognise the possibility that he may be innocent. The law requires that the defamatory sting must be justified and accordingly nothing short of actual proof of fraud will justify either statement.

The words here used are capable of having the meanings set out in paragraph 4 of the statement of claim. An ordinary reasonable man would have concluded that there was fraud or at least that the police reasonably suspected fraud, since the Fraud Squad only investigates cases of fraud. The article was put before the average reader as a matter of front page importance in a national newspaper and not just a piece of colourless information.

On the authorities a statement that A is suspected of a crime can be justified only by showing that he is in fact guilty of it: see *English & Scottish Co-operative Properties etc.* v. *Odhams Press Ltd.*[1]; *Watkin* v. *Hull*[2]; *Monson* v. *Tussaud's Ltd.*[3] and *Cadam* v. *Beaverbrook Newspapers Ltd.*[4]

Until recently the word "innuendo" was used loosely in three different senses: (1) Any extended meaning going beyond the literal meaning of the words used but not depending on the reader's knowledge of any extraneous facts stated in the libel itself. (2) A hidden meaning due to the existence of extraneous facts not stated or appearing from the libel itself but known to the readers. (3) The class of case where there is nothing in the libel itself to identify the individual referred to but where there are extraneous facts which would enable one or more people to identify him: see *Bruce* v. *Odhams Press Ltd.*[6] The boundary between classes (1) and (2) is not easy to draw and may change with time. Thus 20 years ago everyone would have understood what "Quisling" meant, but now a person aged 20 might not understand.

[1] [1940] 1 K.B. 440; 56 T.L.R. 195; [1940] 1 All E.R. 1, C.A.

[2] (1936) 52 T.L.R. 669; [1936] 2 All E.R. 1237, H.L.

[3] [1894] 1 Q.B. 671, 676, 677; 10 T.L.R. 227, C.A.

[4] [1959] 1 Q.B. 413; [1959] 2 W.L.R. 324; [1959] 1 All E.R. 453, C.A.

[6] [1936] 1 Q.B. 697; 52 T.L.R. 227; [1936] 1 All E.R. 287, C.A.

It was as a result of what was said in paragraphs 162 to 166 of the Report of the Committee on the Law of Defamation (1948, Cmd. 7536) that Ord. 19, r. 6 (2), was drafted, because defendants were being taken by surprise by the nature of the evidence called to support meanings pleaded in the innuendo. The plaintiff is now required to give particulars of the facts and matters relied on.

Here the defendants denied that the words meant any of the things alleged in paragraph 4 of the statement of claim and pleaded that they were true in their natural and ordinary meaning. Salmon J. dealt with the situation correctly in holding that no innuendo was necessary here and in leaving only one question to the jury, namely, whether they found for the plaintiffs or the defendants and, if for the plaintiffs, how much in damages. The words were admitted to have a defamatory meaning and in directing the jury the judge was not entitled to rule out one particular defamatory meaning. It was not for the judge to distinguish between the meaning that the plaintiffs were guilty of fraud and that they were suspected of fraud. Even if the judge was wrong in the course he took, the respondents cannot take this point now, because they did not object at the time.

One must look at the words, not as a lawyer would, but as an ordinary man would. There are two contrasting authorities in the Court of Appeal—*Loughans* v. *Odhams Press Ltd.*[7] and *Grubb* v. *Bristol United Press Ltd.*[8] The present case is comparable to the example given by Holroyd Pearce L.J. in the latter case.[9] See also *Hough* v. *London Express Newspaper Ltd.*[10] It is not desired to challenge the judgment in *Grubb's* case,[11] save in so far as there are dicta to indicate that it is permissible to plead the natural and ordinary meaning of the words complained of, because that is a matter entirely for the jury. If in the present case a paragraph had been added to the statement of claim after paragraph 4 pleading alternatively that the words in their natural and ordinary meaning meant what was alleged, that would have been pleading something which was unnecessary, that is, the natural and ordinary meaning.

[7] [1963] 1 Q.B. 299; [1962] 2 W.L.R. 592; [1962] 1 All E.R. 404, C.A.

[8] [1963] 1 Q.B. 309; [1962] 3 W.L.R. 29; [1962] 2 All E.R. 380, C.A.

[9] [1963] 1 Q.B. 309, 327-328.

[10] [1940] 2 K.B. 507, 515; 56 T.L.R. 758; [1940] 3 All E.R. 31, C.A.

[11] [1963] 1 Q.B. 309.

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The plaintiffs cannot be in a worse position for not having pleaded something which was unnecessary. Till after 1948 there were pleaded without distinction innuendoes which represented a true secondary meaning derived from extrinsic facts and false innuendoes based merely on inferences not depending on extraneous matters. So from the reports one cannot now determine into which category they fell. As to cases where two defamatory matters are complained of, see *Emcee* v. *Sunday Pictorial Newspapers (1920) Ltd.*,[12] but in most cases two awards are not asked for.

Capital & Counties Bank Ltd. v. *George Henty & Sons*[13] has been much misunderstood and has been long used by defendants seeking to contend that, if one non-defamatory meaning can be found, the plaintiff is prevented from succeeding, but it does not decide that. It decides that where there is a bare statement of fact for which there may be a number of possible underlying reasons only one of which has a defamatory significance, the words cannot reasonably be regarded as defamatory merely because of the existence of that one possible underlying reason. For example, take the statement, "X has got Y's watch." There might be a hundred innocent reasons why he had it, not reflecting on X at all, although one possible reason was that he stole it, but it would be unreasonable to spell out of the statement the defamatory imputation of larceny. Further, the answer to the question whether words can reasonably convey a particular meaning to the persons to whom they are published must be conditioned by who they are. Thus in *Capital & Counties Bank* v. *George Henty & Sons*[13] the words complained of were published by the bank in a letter to its customers. If the same words had been published as front page news in a newspaper to the public in general, they might reasonably have conveyed a very different and defamatory maning.

A similar sort of case is *Nevill* v. *Fine Art & General Insurance Co. Ltd.*,[14] which dealt with the underlying reasons behind a letter which was literally true. There might have been a hundred non-derogatory reasons for what was written. See also Fraser on Libel and Slander, 7th ed., pp. 12–13, and *Stubbs Ltd.* v. *Russell.*[15]

[12] [1939] 2 All E.R. 384.

[13] (1880) 5 C.P.D. 514, C.A.; (1882) 7 App.Cas. 741, H.L.

[14] [1897] A.C. 68; 13 T.L.R. 97, H.L.

[15] [1913] A.C. 386, 391; 29 T.L.R. 409, H.L.

In the present case the Court of Appeal relied on the *Capital & Counties Bank* case,[16] but that is no authority on the question whether the judge has or has not any function left once he has held that words are capable of a defamatory meaning.

Cassidy v. *Daily Mirror Newspapers Ltd.*,[17] does not help in the present case. Reliance is placed on *Cookson* v. *Harwood.*[18] See also *Chapman* v. *Ellesmere.*[19] *English & Scottish Co-operative Properties Mortgage and Investment Society Ltd.* v. *Odhams Press Ltd.*[20] is very like the present case.

There may be cases where words are defamatory in their ordinary meaning and more defamatory still because of the innuendo. Then it would be wrong not to leave the two issues to the jury. See *Polovstoff* v. *Illustrated Newspapers Ltd.*,[21] which is very close to the present case, in considering whether a statement that an allegation has been made can reasonably be understood to convey an allegation of the commission of the actual offence.

As to damages, these are essentially for the jury and an appeal court will only interfere in very exceptional cases. As to damages for a trading corporation, see Gatley on Libel and Slander, 5th ed., pp. 400–401. As to punitive damages, see *Yousoupoff* v. *Metro-Goldwyn-Mayer Pictures Ltd.*[22] As to section 12 of the Defamation Act, 1952, which allows a defendant to give evidence of other damages recovered by the plaintiff in respect of words to the same effect as those on which the action is founded, this sets juries an almost impossible problem. The judge could have done no more than he did in relation to the section. It is a misfortune that the defendants did not avail themselves of section 5 of the Law of Libel Amendment Act, 1888, dealing with the consolidation of actions.

As to the assessment of damages, see *Phillips* v. *South Western Railway Co.*[23]; *Praed* v. *Graham*[24]; *Greenlands Ltd.* v. *Wilmshurst and London Association for Protection of Trade*[25];

[16] 7 App.Cas. 741.
[17] [1929] 2 K.B. 331.
[18] [1932] 2 K.B. 278n., 285n., C.A.
[19] [1932] 2 K.B. 431; 48 T.L.R. 309.
[20] [1940] 1 K.B. 440; 56 T.L.R. 195; [1940] 1 All E.R. 1, C.A.
[21] (1953) The Times, November 24 (p. 7); November 25 (p. 11); (1954) The Times, February 26 (p. 5), C.A.
[22] (1934) 50 T.L.R. 581, C.A.
[23] (1879) 4 Q.B.D. 406.
[24] (1889) 24 Q.B.D. 53, C.A.
[25] [1913] 3 K.B. 507, C.A.; [1916] 2 A.C. 15; 32 T.L.R. 281, H.L.

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Ley v. *Hamilton* [26] and *Tolley* v. *J. S. Fry & Sons Ltd.* [27] The jury must consider: (1) This was in any view a very serious libel and potentially most damaging to a city man and a trading corporation. (2) It was given front-page circulation in national newspapers. (3) It was of such a nature that it was impossible to catch up with it and refute it effectively. (4) It was reprehensible and inexcusable because, if there was to be a prosecution the newspapers had no business to anticipate it by making a "scoop," while, if there was to be no prosecution, it must have been apparent to anyone that enormous damage would be done to the plaintiffs.

In awarding the damages they did the juries must have taken the view that the words meant that the plaintiffs were actually guilty of fraud.

Colin Duncan following. The whole question of innuendo is not academic but is vital to this appeal. One must consider what is the scope of the duty of the judge to tell the jury how far words are reasonably capable in law of bearing a specific defamatory meaning suggested in the course of the trial. It is conceded that where no innuendo is pleaded the judge, in directing the jury, should say whether the meaning suggested is one which the words are reasonably capable of bearing. In such a case he should tell the jury that it is for them to decide what the words mean and he should tell them what are the factors they should bear in mind in so determining. If a far-fetched meaning has been suggested, he should tell them they may decide whether the words bear that meaning, although he would not so direct them if he had made up his mind that the words were not capable of bearing that meaning. It is the judge's duty to rule whether in law the words are capable of a defamatory meaning. In the present case it was admitted that they were defamatory. It is the judge's duty to rule whether the words are or are not capable in law of the innuendoes attributed to them.

Here the judge was asked to rule whether the words were capable in law of bearing the meanings pleaded in the innuendo and he ruled that they were capable of bearing all those meanings. Those meanings did not arise from counsel's submissions but were pleaded. No other meanings were canvassed. The most

[26] (1935) 153 L.T. 384, H.L.

[27] [1930] 1 K.B. 467; 46 T.L.R. 108, C.A.; [1931] A.C. 333; 47 T.L.R. 351, H.L.

that can be said is that, if the judge had thought the words were incapable of the meanings alleged, he should have told the jury.

From the Common Law Procedure Act, 1852, until 1949 no one would have questioned the propriety of pleading the defamatory meaning in an innuendo and it was very rare for a statement of claim not to contain an innuendo paragraph, but recently there has been talk of " inferential meanings " and " false innuendoes." Formerly the courts were only concerned with the natural and ordinary meaning of words and an innuendo meaning, and that is still so. There is no magic in the mere word " innuendo." It would not offend the proprieties for a judge to rule that some innuendoes were capable of a defamatory meaning and others were not.

The first proposition submitted is that at all times before 1852, between 1852 and 1949 and since then, when a plaintiff has complained that the words in question have a sinister meaning by reason of certain facts extrinsic to the actual words and known to certain publishees, he must at the trial prove the existence of those facts, whether those facts make otherwise innocent words defamatory or whether those facts add additional and graver meanings to words already defamatory in their natural and ordinary meaning. In *Cassidy's* case,[28] *Hough's* case [29] and the *Capital & Counties Bank* case [30] the extrinsic facts were vital. Extrinsic facts are certain facts known to the publishees but for which they could not have understood the words to have a defamatory meaning. To say that Mr. X is very good at advertising would only be defamatory of him if he were a barrister and advertising was contrary to professional etiquette. From 1852 to 1949 it was common form to plead an innuendo. It was always called an " innuendo " without epithet or qualification. Looking back from 1962, one can discover three types of innuendo: (a) What would now be called the " true innuendo," that is, an innuendo depending on the establishment of extrinsic facts which did not have to be pleaded (see, for instance, *Hough's* case [31]). The test was what a reasonable person would have thought. (See the Report of the Committee on the Law of Defamation, pp. 38–39.) Ultimately the jury has to decide what the words mean. The rules referred to are rules of practice and not of construction. (b) The futile innuendo was no more than the recitation of the natural and ordinary meaning of the words. (c) A so-called innuendo which set out sinister meanings derived,

[28] [1929] 2 K.B. 331.
[29] [1940] 2 K.B. 507.
[30] 7 App.Cas. 741.
[31] [1940] 2 K.B. 507.

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not from any extrinsic facts in the narrow sense and equally not from the natural and ordinary meaning of the words in a narrow sense, but from a variety of other matters such as the circumstances of publication, the general tone of the publication or even the remarkable flexibility of the English language. These might be the appearance of the words complained of with banner headlines in a normally sober publication. Or the literal meaning might be innocent but the whole tone one of sarcasm, for example " Brutus is an honourable man " in " Julius Caesar." Or expressions like " Quisling," " pansy " or " dismissed " might have a special meaning. See also *Morris* v. *Sanders Universal Products Ltd.*[32] and *Birne* v. *N. S. L. Ltd.*[33]

The second proposition is that from 1852 to 1949 it was permissible to plead as innuendoes meanings other than the natural and ordinary meaning of the words complained of when those meanings did not depend on the existence of any extrinsic facts but might be attached to them inferentially for one reason or another: see *John Lang & Co. Ltd.* v. *Langlands.*[34] The requirement for an innuendo has not substantially changed. After 1852 there was the same distinction between the bare meaning of the words and filling them out with an extended meaning, which was described as an innuendo. The advantage from the defendant's point of view was that he knew what case he had to meet and what was the plaintiff's version of what the words meant. The only result of the change of practice required by the Rules of the Supreme Court in 1949, Ord. 19, r. 6 (2), was that, when the plaintiff sought to rely on extrinsic facts, he had to give particulars of them, pleading in his statement of claim the facts and circumstances on which he relied, so that the defendant should know what case he had to meet. From 1949 until *Loughans's* case[35] masters habitually struck out innuendoes unsupported by facts as required by that rule; one could not plead an innuendo without giving particulars. Innuendoes have never been pleaded in the alternative. *Loughans's* case[35] decided that it was permissible to have separate paragraphs in a statement of claim setting out as an innuendo the natural and ordinary meaning of words in an extended sense and that then it was not necessary to provide any particulars under Ord. 19, r. 6 (2).

[32] [1954] 1 W.L.R. 67; [1954] 1 All E.R. 47, C.A.

[33] (1957) The Times, April 12 (p. 13).

[34] 1916 S.C.(H.L.) 102, 105; 114 L.T. 665, 667; 32 T.L.R. 255, H.L.

[35] [1963] 1 Q.B. 299.

Neville Faulks Q.C. This pleading in paragraph 4 of the statement of claim was intended to be a true innuendo, but it failed because it did not establish that the words complained of bore more than their natural and ordinary meaning. Two causes of action were alleged, whereas only one should have been: see *Sin* v. *Stretch*.[36] It is proper that a plaintiff should be entitled to say that words in their natural and ordinary meaning mean so and so, and when he has also special facts which, if known to a particular class of persons, would give the words a further meaning, he should be entitled to plead that as a second string to his bow. But here there was no evidence of extrinsic facts to support the innuendo, which should therefore have been withdrawn from the jury. The defendants denied that the words bore the meaning alleged in paragraph 4 of the statement of claim, but the natural and ordinary meaning was admitted and was justified, although the result of it might be that readers of the words might decide to wait till the affair had blown over before inviting Lewis to dinner or buying shares in his company. The Fraud Squad having received a report went into the matter as bloodhounds do. They did not suspect; they merely inquired. Rumour and suspicion are not the same thing, though in some cases they may be equated, according to the meaning of the words used in the particular case. No one could construe the "Daily Telegraph" article as saying that the plaintiffs had been guilty of fraud. The test is: Could a reasonable person think that it meant to impute fraud? Further, to be guilty of fraud and to be suspected of fraud are not the same thing.

The contention that where words are admitted to have a defamatory meaning the judge, in directing the jury, is not entitled to rule out a particular defamatory meaning, is not open to the plaintiffs. Fox's Libel Act, 1792, does not support the submission that this is the position in a civil action for libel. It was declaring the criminal law as it then was: see Brett L.J. in the *Capital and Counties Bank* case[37] and Spencer Bower on Actionable Defamation, 2nd ed., pp. 305–307.

Stubbs Ltd. v. *Russell*[38] is not helpful, because of the difference of Scottish practice. A judge in determining whether words are capable of a defamatory meaning cannot proceed in vacuo. Judges have circumscribed the natural and ordinary meaning of

[36] (1936) 52 T.L.R. 669, 670, 671; [1936] 2 All E.R. 1237, H.L.

[37] 5 C.P.D. 514, 539.

[38] [1913] A.C. 386.

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words when they were prima facie defamatory. See *Cookson* v. *Harewood*[39]; *Harvey* v. *French*[40]; *Gompertz* v. *Levy*[41]; *Hawkes* v. *Hawkey*[42] and *Blagg* v. *Sturt*.[43] One should not approach words with a suspicious mind but look at them as a reasonable man would look at them, finding what a reasonable reader would think and leaving out the lunatic fringe on either side. One must also take into account the nature of the particular newspaper and consider whether or not it is of a responsible character. In the present case the defendants justified the fact that there was a police inquiry, but a reasonable man would not conclude from that statement that everyone concerned was going to Dartmoor Gaol. *Cadam's* case[44] was different from the present case because there the defendants did not know what the plaintiffs said was the ordinary meaning of the words. There is and always has been only one kind of innuendo, and an innuendo is not created by pleading the ordinary and natural meaning of the words as an innuendo: see, for example, *Chapman's* case[45] and *Cookson's* case.[46] *Loughans's* case[47] was not rightly decided. *Grubb's* case[48] was rightly decided. Reliance is placed on the *Capital and Counties Bank* case.[49] The Court of Appeal in the present case were right in holding that Salmon J. should have withdrawn the innuendo from the jury. The whole point of the matter is that an innuendo is a second cause of action, and the judge should tell the jury so. The concept of the "false "innuendo" started because in *Grubb's* case[50] the so-called innuendo in *Loughans's* case[51] was so described. *Grubb's* case[52] shows what a judge must consider in determining whether or not words are capable of a defamatory meaning. As to the *English & Scottish Co-operative* case[53] a "charge" is quite different from an inquiry.

If there had been any question of going beyond the natural and ordinary meaning of the words, evidence might have been called that there were special facts and circumstances which gave rise to a reasonable suspicion of fraud.

[39] [1932] 2 K.B. 478n., 482–483n., 487.
[40] (1832) 1 Cr. & M. 11.
[41] (1839) 9 A. & E. 282.
[42] (1807) 8 East 427.
[43] (1846) 10 Q.B. 899.
[44] [1959] 1 Q.B. 413, 416–417, 419.
[45] [1932] 2 K.B. 431.
[46] [1932] 2 K.B. 278n.
[47] [1963] 1 Q.B. 299.
[48] [1963] 1 Q.B. 309.
[49] 7 App.Cas. 741.
[50] [1963] 1 Q.B. 309.
[51] [1963] 1 Q.B. 299.
[52] [1963] 1 Q.B. 309.
[53] [1940] 1 K.B. 440.

As to the jury's duty in assessing damages, these are not in the nature of a fine. For the principles of assessment: see *Kelly* v. *Sherlock* [54] and *Ley* v. *Hamilton*.[55] The whole matter must be looked at in the round. Damages do not depend on how badly the defendant has behaved but on the injury suffered by the plaintiff, including his injured feelings. See *Ley* v. *Hamilton* [56] in the Court of Appeal. See also *Praed* v. *Graham* [57]; *Hodsoll* v. *Taylor* [58] and *Loudon* v. *Ryder (No. 2)*.[59]

The jury should have been told that they ought to make some mitigation of the damages awarded in respect of the damages in the other action. To ignore them would be to depart from reality. They should also have been told that, while they could give damages for hurt feelings, those feelings were unlikely to have been more hurt by two simultaneous publications than by one. There must be a reasonable relation between the solatium given and the wrong done. If the Court of Appeal cannot interfere with the award in a case like this, they can never interfere. No twelve reasonable men could have reached this figure. As to evidence of general loss of business, see *Ratcliffe* v. *Evans*.[60] As to the general principles relating to excessive damages, see *Mechanical & General Inventions Co. Ltd.* v. *Austin* [61] and *Davies* v. *Powell Duffryn Associated Collieries Ltd.*[62] In *Tolley's* case [63] £1,000 was held to be out of all proportion to the injury suffered. As to the £3,500 damages awarded in *Knuppfer* v. *London Express Newspapers Ltd.*[64] see what was said by Goddard L.J.

On the main issue there are only two points: (1) Are the words in their natural and ordinary meaning capable of conveying that the plaintiffs were guilty of fraud? No. (2) Should the two causes of action have been left together for the jury? No.

Hugh Davidson following. In the matter of damages questions arise concerning the right approach to quantum in libel actions, having regard to the tax element. The total amounts awarded against the "Daily Telegraph" were £25,000 to John

[54] (1865) L.R. 1 Q.B. 686, 697-698.
[55] 153 L.T. 384, 386.
[56] (1934) 151 L.T. 360, 375, C.A.
[57] 24 Q.B.D. 53, 55.
[58] (1873) L.R. 9 Q.B. 79, 82.
[59] [1953] Ch. 423, 427; [1953] 2 W.L.R. 863; [1953] 1 All E.R. 1005.
[60] [1892] 2 Q.B. 524; 8 T.L.R. 597, C.A.
[61] [1935] A.C. 346, 374, H.L.
[62] [1942] A.C. 601; 58 T.L.R. 240; [1942] 1 All E.R. 657, H.L.
[63] [1931] A.C. 333.
[64] [1943] K.B. 80, 91; 59 T.L.R. 31; [1942] 2 All E.R. 555, C.A.; [1944] A.C. 116; 60 T.L.R. 310; [1944] 1 All E.R. 495, H.L.

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Lewis and £75,000 to the company. Deduction of tax has not been considered. *British Transport Commission* v. *Gourley* [65] applies directly to the company and also in its general approach to Lewis if he seeks to prove loss of income resulting from the publication. The only thing for which a company is compensated in a libel action is loss of earnings, and a large proportion of those earnings would have gone to the Revenue. See also Gatley on Libel, 5th ed., pp. 400–401. No distinction can be made between general and special damages in the case of a company. See also *Polovstoff's* case.[66] The award of damages in the present case cannot stand.

David Hirst following. The authorities before 1952 show that the courts circumscribed the natural and ordinary meaning of words. After the Common Law Procedure Act the inferential meaning would be pleaded. It is the duty of the judge not only to rule whether the words are capable of a defamatory meaning in their natural and ordinary sense: if some particular shade of natural meaning is put forward for the plaintiff, then, if the words are incapable of bearing that meaning, it is the duty of the judge to direct the jury that they must disregard it. This applies whether or not a true innuendo is pleaded. The test is always the same, namely, whether the words are capable with reasonable certainty of bearing the meaning contended for. Before 1852 the natural and ordinary meaning was treated as one cause of action and included in one single count, so that, if the true innuendo failed, as it often did, for technical reasons, the court would discard the innuendo and would consider whether the words in their natural and ordinary meaning were capable of the meaning contended for: see *Rex* v. *Horne* [67]; *Hawkes* v. *Hawkey* [68]; *Harvey* v. *French* [69] and *Roberts* v. *Camden.*[70] After 1852 the practice arose of ruling on the natural and ordinary meaning of the words in question under the guise of ruling on the innuendo: see *Gompertz* v. *Levy.*[71]

The *Capital and Counties Bank* case [72] shows that the court is concerned with "*the*" defamatory meaning and not merely "*a*" defamatory meaning. If among many innocent meanings there is one possible defamatory meaning with nothing to point to it, the

[65] [1956] A.C. 185, 199, 202–203, 206–207, 211–212, 212–213, 215; [1956] 2 W.L.R. 41; [1955] 3 All E.R. 796, H.L.

[66] (1954) The Times, February 26 (p. 5).

[67] (1777) 2 Cowp. 672, 683–684.

[68] 8 East 427, 431–432.

[69] 1 Cr. & M. 11, 17–18.

[70] (1807) 9 East 93.

[71] 9 A. & E. 282.

[72] 7 App.Cas. 741, 748, 781, 782, 788, 793.

judge should not leave the question to the jury at large. That decision is not to be pushed aside or ignored, although it is a strong doctrine to which it has sometimes been found convenient to turn a blind eye. If the words cannot bear a suggested defamatory meaning, it is wrong to leave it to the jury: see *Liberace* v. *Daily Mirror Newspapers Ltd.*[73] where the trial judge rightly considered whether the words were capable of bearing one of many suggested defamatory meanings.

The question here is whether the words complained of are capable of meaning fraud and an analogy has been suggested between " suspicion " cases and " rumour " cases. The appellants in effect say that any statement containing a possible indication, however remote, of fraud means an imputation of fraud and can only be justified by proving fraud. There is no authority for this in *Watkin* v. *Hall*[74] and *M'Pherson* v. *Daniels*.[75] *Manson's* case[76] does not support it. The judgment of Mathew J. was not followed in the Court of Appeal. All the nuances should not be bundled together as meaning fraud. The injury is different in each case. Each statement should be assessed at its face value, taking its sting or stings into account and leaving it to the jury to decide what the words in fact mean. " There is an inquiry whether X " is fraudulent " does not convey the same thing as " X is " fraudulent." Rumour may create suspicion but rumour and suspicion are not the same thing. A sub-inference of guilt from an inferred suspicion is not to be made. See what Holroyd Pearce L.J. said in the Court of Appeal.[77] It is not true to say that the police generally deal with crimes. It is common knowledge that they often inquire into facts to find out whether or not a crime has been committed, especially in company cases where they have to dig deep into the books.

As to special damages, see Mayne and McGregor on Damages, 12th ed., pp. 975–980.

Helenus Milmo Q.C. in reply. There are only two issues here: (1) Whether the words are capable in law of amounting to an allegation of fraud and (2) whether the damages are excessive.

At the trial only two meanings were canvassed (a) fraud, the meaning contended for by the plaintiffs, and (b) the literal meaning pure and simple. If the words meant no more than the latter, the only issue would be whether it was proved to the

[73] (1959) The Times, June 17 (p. 13), June 15 (p. 14).
[74] L.R. 3 Q.B. 396.
[75] 10 B. & C. 263.
[76] [1894] 1 Q.B. 671.
[77] [1963] 1 Q.B. 340, 370–371.

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jury's satisfaction that there was in fact a police inquiry by the Fraud Squad. The jury did not find that that was the meaning; the damages awarded negatived that, since they are only consistant with the jury having found that the words amounted to an allegation of fraud. On the pleadings of the defendants, they could not, on a new trial go beyond the primary fact of the police inquiry. They have denied that the words in their natural and ordinary meaning impute fraud and they have pleaded no facts giving rise to a reasonable suspicion of fraud. In *Manson's* case [78] not only was Manson suspected of murder but there were strong grounds for suspecting him. On the footing that the words conveyed a clear imputation of guilt, the judgment of Mathew J. was approved in the Court of Appeal.

For there to be two causes of action the innuendo must be something which cannot be part of the natural and ordinary meaning; otherwise there is only one cause of action. There is no need to plead anything but a true innuendo. It is not obligatory to plead the natural and ordinary meaning and the plaintiffs are not confined to what was pleaded in paragraph 4, because the jury are entitled to say what they consider is the natural and ordinary meaning. A judge may rule that words are incapable of a particular defamatory meaning, although it has not been pleaded, but it should be left to the jury to say what the words do mean. The law of libel has been growing for a long time and it is now very different from what it was at the start of the nineteenth century.

The question here is what meaning should reasonably be ascribed to these words, what (if any) was the defamatory content of these words in the context in which they were published. If they are defamatory it is because they amount to an allegation of fraud. Whether that is what they mean to the persons to whom they are published depends on all the circumstances of publication, including the place where they appear. It is false to try to distinguish between rumour and suspicion. The defamatory content of repeating suspicions is to make an allegation of fraud. If a defendant could justify by proving reasonable grounds of suspicion, no reputation would be safe. Suspicion may be based on facts which are false or facts which give a false impression because they are incomplete.

As to damages, although admittedly it is not right after *Ley* v. *Hamilton* [79] to make a mathematical division between various

[78] [1894] 1 Q.B. 671, 694, 695. [79] 153 L.T. 384.

elements to be taken into consideration in awarding damages, there are two elements to be considered, compensation and punishment. The latter has nothing to do with compensation. *Ley* v. *Hamilton*[80] did not say that the punitive element does not arise in cases of defamation. The objection was to the "pleasantries" of Hamilton L.J. in the *Greenlands* case.[81] A company cannot have feelings but it has a reputation, directors, officers and employees and in that connection is in no different position from an ordinary individual and can be awarded punitive damages when an individual would be awarded them. If a company is accused of criminal fraud, it is inconceivable that that would not predispose customers and potential customers against it. The potential customers deterred from dealing with it cannot be called as witnesses, because they are not known.

Their Lordships took time for consideration.

March 26, 1963. LORD REID. My Lords, these are appeals in two actions for libel brought by the appellants Mr. Lewis and a company of which he is managing director against the proprietors of the "Daily Telegraph" and the "Daily Mail" in respect of paragraphs referring to them which appeared on the front pages of those newspapers on December 23, 1958. I have had an opportunity of reading the speeches about to be delivered by my noble and learned friends who deal fully with the facts and I shall not set out the passages of which complaint is made. On July 19, 1961, a jury awarded damages against the "Daily Telegraph" of £25,000 to Mr. Lewis and £75,000 to his company. On July 21 a different jury awarded against the "Daily Mail" £17,000 to Mr. Lewis and £100,000 to his company.

The Court of Appeal ordered new trials on several grounds of which the two most important are that the trial judge misdirected the juries and that the damages are so excessive that the awards cannot be allowed to stand. On the matter of misdirection there is no material difference between the two cases.

The essence of the controversy between the parties is that the appellants maintain that these passages are capable of meaning that they were guilty of fraud. The respondents deny this: they admit that the paragraphs are libellous but maintain that the juries ought to have been directed that they are not capable of the meaning which the appellants attribute to them. The learned

[80] 153 L.T. 384, 386.

[81] [1913] 3 K.B. 507.

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judge directed the juries in such a way as to leave it open to them to accept the appellants' contention, and it is obvious from the amounts of damages awarded that the juries must have done this.

The gist of the two paragraphs is that the police, the City Fraud Squad, were inquiring into the appellants' affairs. There is no doubt that in actions for libel the question is what the words would convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of worldly affairs. I leave aside questions of innuendo where the reader has some special knowledge which might lead him to attribute a meaning to the words not apparent to those who do not have that knowledge. That only arises indirectly in this case. There has been much argument about innuendoes, true or false, and about proper methods of pleading. My noble and learned friends intend to deal with those matters and I shall not add to their explanations. I shall only make some observations on the footing that in this case there is no question of innuendo in the true sense.

What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning. Here there would be nothing libellous in saying that an inquiry into the appellants' affairs was proceeding: the inquiry might be by a statistician or other expert. The sting is in inferences drawn from the fact that it is the fraud squad which is making the inquiry. What those inferences should be is ultimately a question for the jury, but the trial judge has an important duty to perform.

Generally the controversy is whether the words are capable of having a libellous meaning at all, and undoubtedly it is the judge's duty to rule on that. I shall have to deal later with the test which he must apply. Here the controversy is in a different form. The respondents admit that their words were libellous, although I am still in some doubt as to what is the admitted libellous meaning. But they sought and seek a ruling that these

words are not capable of having the particular meaning which the appellants attribute to them. I think that they are entitled to such a ruling and that the test must be the same as that applied in deciding whether the words are capable of having any libellous meaning. I say that because it appears that when a particular meaning has been pleaded, either as a "true" or a "false" innuendo, it has not been doubted that the judge must rule on the innuendo. And the case surely cannot be different where a part of the natural and ordinary meaning is, and where it is not, expressly pleaded.

The leading case is *Capital and Counties Bank Ltd.* v. *Henty & Sons.*[1] In that case Lord Selborne L.C. said: "The "test, according to the authorities, is, whether under the circum- "stances in which the writing was published, reasonable men, to "whom the publication was made, would be likely to understand "it in a libellous sense." Each of the four noble Lords who formed the majority stated the test in a different way, and the speeches of Lord Blackburn and Lord Watson could be read as imposing a heavier burden on the plaintiff. But I do not think that they should now be so read. In *Nevill* v. *Fine Art & General Insurance Co. Ltd.*[2] Lord Halsbury said: " . . . what is the sense "in which any ordinary reasonable man would understand the "words of the communication so as to expose the plaintiff to "hatred, or contempt or ridicule . . . it is not enough to say that "by some person or another the words *might* be understood in a "defamatory sense." These statements of the law appear to have been generally accepted and I would not attempt to restate the general principle.

In this case it is, I think, sufficient to put the test in this way. Ordinary men and women have different temperaments and outlooks. Some are unusually suspicious and some are unusually naïve. One must try to envisage people between these two extremes and see what is the most damaging meaning they would put on the words in question. So let me suppose a number of ordinary people discussing one of these paragraphs which they had read in the newspaper. No doubt one of them might say— "Oh, if the fraud squad are after these people you can take it "they are guilty." But I would expect the others to turn on him, if he did say that, with such remarks as—"Be fair. This "is not a police state. No doubt their affairs are in a mess or "the police would not be interested. But that could be because

[1] (1882) 7 App.Cas. 741, 745, H.L. [2] [1897] A.C. 68, 72, 73; 13 T.L.R. 97, H.L.

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"Lewis or the cashier has been very stupid or careless. We "really must not jump to conclusions. The police are fair and "know their job and we shall know soon enough if there is any-"thing in it. Wait till we see if they charge him. I wouldn't "trust him until this is cleared up, but it is another thing to "condemn him unheard."

What the ordinary man, not avid for scandal, would read into the words complained of must be a matter of impression. I can only say that I do not think that he would infer guilt of fraud merely because an inquiry is on foot. And, if that is so, then it is the duty of the trial judge to direct the jury that it is for them to determine the meaning of the paragraph but that they must not hold it to impute guilt of fraud because as a matter of law the paragraph is not capable of having that meaning. So there was here, in my opinion, misdirection of the two juries sufficiently serious to require that there must be new trials.

Before leaving this part of the case I must notice an argument to the effect that you can only justify a libel that the plaintiffs have so conducted their affairs as to give rise to suspicion of fraud, or as to give rise to an inquiry whether there has been fraud, by proving that they have acted fraudulently. Then it is said that if that is so there can be no difference between an allegation of suspicious conduct and an allegation of guilt. To my mind, there is a great difference between saying that a man has behaved in a suspicious manner and saying that he is guilty of an offence, and I am not convinced that you can only justify the former statement by proving guilt. I can well understand that if you say there is a rumour that X is guilty you can only justify it by proving that he is guilty, because repeating someone else's libellous statement is just as bad as making the statement directly. But I do not think that it is necessary to reach a decision on this matter of justification in order to decide that these paragraphs can mean suspicion but cannot be held to infer guilt.

Even if the paragraphs were capable of meaning that the appellants were guilty of fraud I would think that the damages awarded were far too high, and a fortiori the awards could not stand if the most that could be read into the words is that they had conducted their affairs in such a way as to give rise to suspicion or to justify a police inquiry. I do not say that these amounts of damages could never be justified, but at least there would have to be evidence of a very different kind from that adduced in these cases. I do not intend to analyse the evidence already given because that might hamper the conduct of the new

trials with regard to both the plaintiffs' case and the defendants' pleas of justification. But two particular matters raised in argument will probably arise at the new trials and they require some clarification.

Here there were similar libels published in two national newspapers on the same day and each has to be dealt with by a different jury. If each jury were to award damages without regard to the fact that the plaintiffs are also entitled to damages against the other newspaper, the aggregate of the damages in the two actions would almost certainly be too large. Section 12 of the Defamation Act, 1952, is intended to deal with that. In effect it requires that each jury shall be told about the other action, but the question is what each jury should be told. I do not think it is sufficient merely to tell each jury to make such allowance as they may think fit. They ought, in my view, to be directed that in considering the evidence submitted to them they should consider how far the damage suffered by the plaintiffs can reasonably be attributed solely to the libel with which they are concerned and how far it ought to be regarded as the joint result of the two libels. If they think that some part of the damage is the joint result of the two libels they should bear in mind that the plaintiffs ought not to be compensated twice for the same loss. They can only deal with this matter on very broad lines and they must take it that the other jury will be given a similar direction. They must do the best they can to ensure that the sum which they award will fully compensate the plaintiffs for the damage caused by the libel with which they are concerned, but will not take into account that part of the total damage suffered by the plaintiffs which ought to enter into the other jury's assessment.

The other question arises out of the decision of this House in *British Transport Commission* v. *Gourley*[3] which deals with damages for loss of income caused by a tort. In that case Mr. Gourley had been seriously injured in a railway accident. He had been earning a large income and it was found that his loss of income due to his injuries was £37,720. But this was the gross income which he would have received but for his injuries. Out of it he would have had to pay income tax and surtax. And it was found that after paying tax he would only have retained £6,695. So his real loss was only £6,695 because he could never have derived any advantage from the balance which he would have had to pay away in tax. As damages are not subject to tax, he would have recovered far more than his real loss, if he

[3] [1956] A.C. 185; [1956] 2 W.L.R. 41; [1955] 3 All E.R. 796, H.L.

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had recovered the gross amount of £37,720, and accordingly it was held that he was only entitled to receive £6,695 in respect of his loss of income as this was sufficient to compensate him fully for the income which he had lost by the fault of the defendants.

There can be no difference in principle between loss of income caused by negligence and loss of income caused by a libel. Let me take first the case of the plaintiff company. A company cannot be injured in its feelings, it can only be injured in its pocket. Its reputation can be injured by a libel but that injury must sound in money. The injury need not necessarily be confined to loss of income. Its goodwill may be injured. But in so far as the company establishes that the libel has, or has probably, diminished its profits, I think that *Gourley's* case [3] is relevant.

But damages for libel have to be assessed by a jury, and juries are not expected to make mathematical calculations, so they can only deal with this matter on broad lines. I think that a jury ought to be directed to the effect that if they think that the plaintiff company has proved that it has suffered or will suffer loss of profit as a result of the libel they must bear in mind that the company would have had to pay income tax at the standard rate out of that profit if it had been earned and would only have been entitled to keep the balance. So in assessing damages they ought not to take into account the whole of that profit, but should make allowance for the obligation to pay income tax out of it.

The position with regard to an individual plaintiff is rather different. He may be entitled to very substantial damages although his income has not been affected by the libel. But if he does attempt to prove loss of income as a result of the libel, then I think that a similar direction must be given to the jury, and it may be necessary to mention surtax as well as income tax.

Accordingly, I shall move in each case that the appeal should be dismissed, that a new trial be ordered, that costs of the abortive trial should abide the result of the new trial, and that the appellants be ordered to pay the respondents' costs in the Court of Appeal and in this House.

My noble and learned friend, Lord Jenkins, is unable to be present this morning, and he desires me to say that he concurs.

LORD MORRIS OF BORTH-Y-GEST stated the facts, summarised the pleadings, read what Salmon J. said on the submission that the innuendoes should be withdrawn from the jury and said that paragraph 4 of the statement of claim must be regarded as

pleading an innuendo in the strict sense and that before the House of Lords it was common ground that the fact that certain meanings were alleged by way of innuendo did not debar the plaintiffs from contending that those words were in fact the direct or ordinary or primary meaning of the words. He continued: It is clearly settled that an innuendo constitutes a cause of action separate from the libel itself, and in respect of which a separate verdict should be returned and separate damages (if to be awarded) should be assessed. (See *Sim* v. *Stretch* [4] and *Watkin* v. *Hall.*[5]) Unless the court otherwise permits, any payment into court referable to an innuendo must be a separate payment.

The words of the judge show that he fully appreciated the difficulty that faced the pleader and that he considered that the pleading of innuendoes had really been unnecessary. That was because the innuendoes did not go beyond the meanings that the plaintiffs said were conveyed by the words of the libel. The effect of what the judge did was that the case proceeded on the footing that the paragraphs should be treated as being no more than paragraphs which recorded what the plaintiffs submitted were the ordinary meanings of the words. The paragraphs were, however, in form and must be regarded as being in fact, paragraphs which pleaded innuendoes. That being so, if the judge took the view that no extrinsic facts were proved which could support an innuendo he should, I think, have said in direct terms that he was not leaving any innuendo in its true sense to the jury, and instead of refusing the application should have, at least to some extent, acceded to it. If he was prepared to allow the paragraphs to remain in some form he should perhaps have required that they be amended so that they were no longer paragraphs which pleaded innuendoes. But the case went on just as though he had done that. The paragraphs were treated as though they did not contain innuendoes in a true sense. They were regarded as being of the style of paragraphs which in pleadings before the introduction of Ord. 19, r. 6 (2), used the word "innuendo" in a more general way and not in its strict or technical sense. So no harm to the respondents resulted from the ruling of the judge. The case continued in spite of the actual language of his ruling, just as the respondents suggested that it should proceed. No innuendo (using that word in its strict sense) was in fact left to the jury. The summing-up directed the jury

[4] (1936) 52 T.L.R. 669, 671; [1936] 2 All E.R. 1237, H.L.

[5] (1868) L.R. 3 Q.B. 396.

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to consider what the words themselves meant and conveyed. Had the judge left an innuendo to the jury he would have had to require the jury to deal with it as a separate issue. His words show that he regarded the paragraphs as harmless paragraphs which had not hurt the defendants but had perhaps helped them by forewarning them as to what the plaintiff said that the words meant. He did, however, consider that the words complained of were of and by themselves capable of bearing the meanings alleged by the plaintiffs, and he left it to the jury to say what they thought that the words meant. Here I think (apart from the issues concerning the damages) is the real issue in the case. Was the judge right in deciding (as he implicitly did) that the words were capable of bearing all the alleged meanings? Once the judge had reached that conclusion, then any question as to innuendoes seems to me to have dropped out of the case.

Where a plaintiff brings an action for libel he may sustain his case (where there is a trial with a jury) if the judge rules that the words, in what has been called their natural and ordinary meaning (or their "ordinary" meaning—see Ord. 19, r. 6 (2)) are capable of being defamatory, and if the jury find that they are defamatory. A plaintiff may, however, sustain his case in a different way. He may plead an innuendo. He may establish that because there were extrinsic facts which were known to readers of the words, such readers would be reasonably induced to understand the words in a defamatory sense which went beyond or which altered their natural and ordinary meaning, and which could be regarded as a secondary or as an extended meaning. The nature of an innuendo (using that word in its correct legal sense) has recently been reviewed in the valuable judgments delivered in the Court of Appeal in *Grubb* v. *Bristol United Press Ltd.*[6] A defamatory meaning which derives no support from extrinsic facts but which is said to be implied from the words which are used is not a true innuendo. If there are some special extrinsic facts the result may be that to those who know them words may convey a meaning which the words taken by themselves do not convey.

In the present case I am disposed to agree with the Court of Appeal that no extrinsic facts were proved which yielded the necessary support to sustain an innuendo. This, however, became a matter of no consequence in the case, for if the meanings alleged in the pleaded innuendo were no more than the meanings

[6] [1963] 1 Q.B. 309; [1962] 3 W.L.R. 25; [1962] 2 All E.R. 380, C.A.

expressed or conveyed by, or to be implied from, the words themselves, then there was no need to plead innuendoes. It was not really being alleged that the words were used in a defamatory sense other than their ordinary meaning.

Though the two paragraphs 4 were undoubtedly pleaded as innuendoes, once it was clear that the contention of the plaintiffs was that the words themselves would be understood by ordinary readers to be conveying and expressing the meanings recorded in those paragraphs, then the case for the plaintiffs was direct and straightforward and was not in any way advanced or assisted by any mention of an innuendo. Though the paragraphs were not struck out, the only significance of their remaining was that they usefully contained and recorded the ordinary meanings which the plaintiffs said were conveyed by the words printed in the newspaper. It followed that it was quite unnecessary for the judge to tell the jury what an innuendo was, or even to use the word (and he did not) or to leave any issue or question to them concerning an innuendo. The question left to the jury—within the limits of the meanings which the judge regarded the words as being capable of bearing—was as to what they thought ordinary people would consider that the words meant.

In a case where there is no innuendo pleaded, it is not essential for a plaintiff to record and define in his pleadings what he says are the ordinary or direct or natural or implied meanings of the words. If, however, he does do so (as may often be helpful provided it is made clear what is being done), and if the judge considers that the words are not capable of bearing any one or more of such meanings, he ought so to rule. If the plaintiff does not do so, the various meanings suggested by the plaintiff will almost invariably be canvassed during the trial, and if the judge considers that the words are not capable of bearing any one or more of them, again he ought so to rule.

It is of some importance to consider how the issues in the case rested. Publication of the words complained of was admitted. The separate plaintiffs (the company and Mr. Lewis) claimed and the defendants denied that in their natural and ordinary meaning the words meant what was set out in the two paragraphs. It was not denied by the defendants and it was therefore tacitly admitted that the words in their natural and ordinary meaning were defamatory of the plaintiffs, but the defendants' contention was that in their natural and ordinary meanings the words only meant that there was an inquiry by the

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City of London Fraud Squad. The defendants' plea of justification was accordingly and for that reason limited to that meaning which was the only defamatory meaning that they said that the words bore. They said that there had been an inquiry. The plaintiffs said that there had not been anything that could be called an inquiry or that the defendants had not proved that there had been such an inquiry. The defendants pleaded in mitigation of damages that on December 24, 1958, they published a statement by Mr. Lewis expressing his view of the facts, and they also pleaded that the plaintiffs had claimed damages for the same or a similar libel from Associated Newspapers Ltd.

If the learned judge was correct in holding that the words were capable of bearing the meanings that the affairs of the company or its subsidiaries were conducted fraudulently or dishonestly or that the personal plaintiff had been guilty of fraud or dishonesty in connection with the affairs of the company or its subsidiaries, then I see no grounds for criticism of his summing-up on the issues of liability. He invited the jury to decide what they thought ordinary reasonable people would consider the words to mean. Having regard to the guidance given by Lord Selborne L.C. in his speech in *Capital and Counties Bank Ltd.* v. *Henty & Sons*[7] that was, I think, an entirely correct approach. Lord Selborne said: "The test, according to the authorities, is, "whether under the circumstances in which the writing was "published, reasonable men, to whom the publication was made, "would be likely to understand it in a libellous sense." See also the words of Lord Blackburn.[8]

My Lords, words are but instruments which men use to express and convey their meanings. The learned judge asked the jury to say what meanings the words in question would convey, not to people with some special or particular knowledge, but just to ordinary men and women going about their ordinary affairs. It is in this sense that in defamation cases the phrase "natural "and ordinary meaning" (which may include an implied or indirect meaning) is used. Not resting upon any technical process of analysis or construction, nor upon a process of critical reading, the inquiry is as to what meanings are conveyed to hearers or readers by the medium of words. This is a matter for the jury, though a jury must not be asked to consider a meaning which the words in question are not reasonably capable of bearing.

It was said in the Court of Appeal that the learned judge had

[7] 7 App.Cas. 741, 745. [8] Ibid. 772.

failed to remember that the defendants were admitting that the words, in what they said was their only natural meaning, were defamatory. I do not think that there is any substance in this, for the learned judge asked the jury whether, if the words bore the very limited meaning contended for by the newspaper, they considered that the words were justifiable as being true: the necessity to consider the defence of justification would only arise on the basis that the words were defamatory, and there is no reason to think that the judge was either under a misapprehension or that he need have said more to the jury than he did. He put very fairly before the jury the rival contentions as to what the words meant. We do not know exactly what the jury decided that the words meant because with the assent of both sides only the one question set out above was left to them. As it is important to see how the matter was put to the jury, I venture to quote the words of the learned judge: [His Lordship read the summing-up and continued:]

My Lords, I turn to consider the question whether the words were capable of bearing the meaning that the affairs of the company and/or its subsidiaries were conducted fraudulently or dishonestly. I do not understand any of your Lordships to be of the view that the words were not capable of bearing the meaning that the police suspected that the affairs of the company or its subsidiaries were conducted fraudulently or dishonestly: nor did I understand any submission to be made that the words were not so capable.

It is a grave thing to say that someone is fraudulent. It is a different thing to say that someone is suspected of being fraudulent. How much less wounding and damaging this would be must be a matter of opinion depending upon the circumstances. Similarly in the case of the personal plaintiff the submission is made that the words, while capable of bearing some of the alleged meanings, were not capable of bearing the meanings that Mr. Lewis had been guilty of fraud or dishonesty in connection with the affairs of the company or its subsidiaries or had caused or permitted the affairs to be conducted fraudulently or dishonestly.

My Lords, the only question that now arises is not whether the words did bear but whether they were capable of bearing the meanings to which I have referred. What could ordinary reasonable readers think? Some, I consider, might reasonably take the view that there was just an inquiry to find out whether or not there had been any fraud or dishonesty. Some, I consider, might reasonably take the view that the words meant that there was an

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inquiry because the police suspected that there had been fraud or dishonesty. Some, I consider, might reasonably take the view that the words meant that there was an inquiry because there had been fraud or dishonesty which occasioned or required inquiry by the police. Some, I consider, might reasonably take the view that the words meant that the inquiry was either (a) because there had been fraud or dishonesty or (b) because of a suspicion that there had been.

My Lords, it is not for me to say what I think was the meaning which the words conveyed to the ordinary reasonable reader of a newspaper, nor is it for me to express any opinion as to what conclusion a jury should reach as to this matter, but I do not consider that that meaning which involved that there had been fraud or dishonesty was a meaning which the jury should have been prohibited from considering on the basis that it was a meaning of which the words were not capable. I do not think that it can be said that twelve jurors could not reasonably have come to the conclusion that the words bore the meaning now being considered. In using this language I am following the approach suggested by Lord Porter in his speech in *Turner* v. *Metro-Goldwyn-Mayer Pictures Ltd.*[9] See also *Nevill* v. *Fine Art & General Insurance Co. Ltd.*[10]

My Lords, a reasonable reader will probably be a fair-minded reader. The fair-minded reader would assume that a responsible newspaper would also be fair. If there was some private police inquiry in progress, the purpose of which was to ascertain whether or not there had been fraud or dishonesty, what possible justification could there be for proclaiming this far and wide to all the readers of a newspaper? If confidential information was received to the effect that there was a police inquiry, on what basis could the publishing of such information be warranted? There is no suggestion that the police had asked that any notice should be published. Under certain circumstances a newspaper may enjoy qualified privilege if it publishes a notice issued for the information of the public by or on behalf of a chief officer of police. (See section 7 of the Defamation Act, 1952.) If there was a police inquiry by a " Fraud Squad " which might result in the conclusion that any suspicion of fraud or dishonesty was wholly unwarranted, how manifestly unfair it would be to make public mention of the inquiry. What purpose could there be in doing so? With these

[9] (1950) 66 T.L.R. (Pt. 1) 342; [1950] 1 All E.R. 449, H.L.

[10] [1897] A.C. 68, 76.

thoughts and questions in his mind, a reasonable reader might well consider that no responsible newspaper would dare to publish, or would be so cruel as to publish, the words in question unless the confidential information, which in some manner they had obtained, was not information merely to the effect that there was some kind of inquiry in progress but was information to the effect that there was fraud or dishonesty. Some reasonable readers might therefore think that the words conveyed the meaning that there must have been fraud or dishonesty.

Furthermore, a reasonable reader might reflect that while the police may be concerned with inquiries as to whether some crime has or has not been committed, they are probably more often only concerned after a crime has been committed. They have to inquire whether they possess the necessary evidence for the launching of a prosecution. Reasonable readers might also think that inquiries into the affairs of a company if such inquiries were not concerned with fraud or dishonesty would not be conducted by the police at all. They would be conducted by persons or departments having no connection with the City of London Police Fraud Squad. Some of such readers might therefore be led to believe that if there was an inquiry by the City of London Fraud Squad, which a newspaper felt justified in mentioning, it must have been an inquiry to collect and marshal evidence in order to launch a prosecution for some offences involving fraud or dishonesty which had been committed.

My Lords, it was for the jury to determine what they considered was the meaning that the words would convey to ordinary men and women: we have only to decide as to the limits of the range of meanings of which the words were capable. For the reasons that I have given I have the misfortune to differ from your Lordships as to this very important part of the case. I consider that the learned judge was fully entitled to leave the matter to the jury in the way in which he did, and I consider that his directions concerning liability were clear and correct and fair.

My Lords, in the consolidated action against the "Daily "Mail" a similar issue arises to that which I have been discussing.

On the difficult issue as to damages I do not differ from your Lordships or from the Court of Appeal that the awards of damages were excessive and cannot stand. This issue was fully debated and the relevant evidence was carefully examined. As there must be new trials, I do not think that there is need to say more in

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regard to this matter. I would wish to add that having had the privilege of reading in advance the speech which has been delivered by my noble and learned friend, Lord Reid, I am in agreement with his observations in regard to section 12 of the Defamation Act, 1952, and in regard to the extent of any relevance of the case of *British Transport Commission* v. *Gourley*.[11]

Because I do not dissent on the issue as to damages I agree that there must be new trials and that therefore the appeals should be dismissed.

LORD HODSON. My Lords, in these actions large damages were awarded to the plaintiff, Mr. Lewis, and to the company, Rubber Improvement Ltd., of which the first plaintiff is the managing director. In the first pair of actions, which were consolidated with one another, the "Daily Telegraph" was the defendant, in the second pair, likewise consolidated, Associated Newspapers Ltd., proprietors of the "Daily Mail," were defendants.

The pairs of actions were tried separately, no step being taken to have them consolidated, although the language of the libels is similar and each defendant is a newspaper having a wide national circulation. [His Lordship read the words complained of, stated the result of the actions and continued:]

The Court of Appeal ordered a new trial, holding that in any event the damages were so excessive that no reasonable jury could have awarded so large a figure, and that there was a misdirection on the part of the trial judge in respect of the meaning of the libels.

The defendants did not deny that the words complained of were defamatory of the plaintiffs. They justified the words as true in their natural and ordinary meaning, and denied that they bore any of the meanings which they were said to bear by innuendo, in effect that the plaintiffs were guilty or suspected by the police of fraud or dishonesty in connection with the affairs of the company or its subsidiaries.

The appellants recognise that in awarding such large damages on each trial the juries must have taken the view that the words of which they complain meant that they had been actually guilty of fraud, a meaning which the defendants have throughout disclaimed.

[11] [1956] A.C. 185.

No one doubts that it is for the jury to decide the meaning of words not as a question of pure construction but as a question of fact, as Lord Tenterden C.J. put it in *Harvey* v. *French*,[12] to be read "in the sense in which ordinary persons, or in which we "ourselves out of court . . . would understand them." Whether the words are capable of defamatory meaning is for the judge, and where the words, whether on the face of them they are or are not innocent in themselves, bear a defamatory or more defamatory meaning because of extraneous facts known to those to whom the libel has been published, it is the duty of the judge to rule whether there is evidence of such extraneous facts fit to be left to the jury.

It is in conjunction with secondary meanings that much of the difficulty surrounding the law of libel exists. These secondary meanings are covered by the word "innuendo," which signifies pointing out what and who is meant by the words complained of. Who is meant raises no problem here, but what is meant is of necessity divided into two parts much discussed in this case. Libels are of infinite variety, and the literal meaning of the words, even of such simple phrases as "X is a thief", does not carry one very far, for they may have been spoken in play or other circumstances showing that they could not be taken by reasonable persons as imputing an accusation of theft. Conversely, to say that a man is a good advertiser only becomes capable of a defamatory meaning if coupled with proof, for example, that he was a professional man whose reputation would suffer if such were believed of him.

The first subdivision of the innuendo has lately been called the false innuendo as it is no more than an elaboration or embroidering of the words used without proof of extraneous facts. The true innuendo is that which depends on extraneous facts which the plaintiff has to prove in order to give the words the secondary meaning of which he complains.

The classic example is to be found in *Barham* v. *Nethersal*,[13] referred to by De Grey C.J. in *Rex* v. *Horne*[14] in the following passage relating to a charge of criminal libel: "But as an "innuendo is only used as a word of explanation, it cannot extend "the sense of the expressions in the libel beyond their own "meaning; unless something is put upon the record for it to

[12] (1832) 1 Cr. & M. 11.
[13] (1602) 4 Co.Rep. 20.
[14] (1777) 2 Cowp. 672, 684.

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" explain. As in actions upon the case against a man for saying " of another, ' He has burnt my barn ' (*Barham's* case [15]), the " plaintiff cannot there, by way of innuendo, say, meaning ' his " ' barn full of corn '; because that is not an explanation of what " was said before, but an addition to it. But if in the introduction " it had been averred, that the defendant had a barn full of corn, " and that in a discourse about that barn, the defendant had " spoken the words charged in the libel of the plaintiff; an " innuendo of its being the barn full of corn would have been " good: for by coupling the innuendo in the libel with the intro- " ductory averment, ' his barn full of corn,' it would have made " it complete."

The innuendo in this case was set out in the statement of claim as a separate paragraph and was or purported to be a true innuendo, for the plaintiff gave particulars pursuant to R.S.C., Ord. 19, r. 6 (2), of the facts and matters which he relied upon in support of a sense other than the ordinary meaning. It is plain on the authorities that since the Common Law Procedure Act, 1852, which did away with the necessity for a prefatory averment showing the sense in which words were used and enacted by section 61 that " where the words or matter set forth, with or " without the alleged meaning, show a cause of action, the dec- " laration shall be sufficient," the true innuendo has been treated as a separate cause of action from that which arose from the words in their natural and ordinary meaning (with or without inferential meanings commonly called false innuendoes). See per Blackburn J. in *Watkin* v. *Hall* [16] and per Lord Atkinson in *Sim* v. *Stretch*.[17]

After the passing of the Common Law Procedure Act until the year 1949 when Ord. 19, r. 6 (2), came into force there was in many cases no distinction to be found between the true and the false innuendo. No special facts had to be pleaded to support the innuendo and the distinction became blurred between the true innuendo and that which was very often nothing but a wordy explanation or attempted explanation of the words complained of in their natural and ordinary meaning.

This blurring is manifest in the pleadings of the plaintiff here, for it contains the plaintiff's contention as to the natural and ordinary meaning of the words complained of, that is to say that

[15] 4 Co.Rep. 20.
[16] L.R. 3 Q.B. 396, 462.
[17] 52 T.L.R. 669, 671.

they mean that he and his company were fraudulent or suspected of fraud, and it is at the same time supported by particulars given under Ord. 19, r. 6 (2), as of a true innuendo. As the Court of Appeal found, and I have no doubt they were right, the particulars did not show, nor was any evidence given of, extraneous facts in support of the innuendo and accordingly the innuendo should not have been left to the jury. Although the innuendo was not pleaded in the alternative, yet, as the Court of Appeal held, in my opinion quite rightly, this did not prevent the plaintiffs seeking to show, if they could, that the natural and ordinary meaning of the words complained of was to the same effect. To hold otherwise and not to permit the jury to impute to the ordinary meaning of the words any part of the failed innuendo would, as Holroyd Pearce L.J. pointed out, have the effect of removing the jury's decision on whether the words are in their ordinary sense a libel into an unreal technical and artificial sphere.

I agree with the observations of Upjohn L.J. in *Grubb* v. *Bristol United Press Ltd.*[18] to the effect that Ord. 19, r. 6 (2), makes no alteration in the law except in cases where a true innuendo is pleaded. A pleader is entitled to allege in his statement of claim what the words in their natural and ordinary meaning convey, provided he makes it clear that he is not relying upon a true innuendo which gives a separate cause of action and requires a separate verdict from the jury. It is desirable that he should do so, for where there is no true innuendo the judge should define the limits of the natural and ordinary meaning of the libel and leave to the jury only those meanings which he rules are capable of being defamatory. If the natural and ordinary meaning is pleaded the defence will know what the contentions of the plaintiff are and the judge will not have to analyse the submissions of counsel in his charge to the jury without having the benefit of a pleading setting out what those submissions are.

There is no conflict, in my opinion, between the decisions of the Court of Appeal in *Grubb's* case[19] and in *Loughans* v. *Odhams Press Ltd.*[20] when properly understood, as indeed was pointed out by Upjohn L.J. in the former case. The difficulty arises from some words (perhaps unguarded) used by Diplock L.J. in

[18] [1963] 1 Q.B. 309, 333.
[19] [1963] 1 Q.B. 309.
[20] [1963] 1 Q.B. 299; [1962] 2 W.L.R. 692; [1962] 1 All E.R. 404, C.A.

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Loughans' case [21] and cited by Davies L.J. in *Grubb's* case [22] to the effect that the plaintiff may require a verdict from a jury as to whether the words bear a special defamatory meaning even though he had led no evidence of facts and matters on which he relies other than the words themselves as giving rise to the meaning alleged in the innuendo. This, I agree with Davies L.J., he cannot do. There is one cause of action based on the words in their natural and ordinary meaning and another based on the words in such meaning as may be alleged in a true innuendo, but not a third cause of action based on the false innuendo.

The defendants having admitted that the words are defamatory in their ordinary meaning have always maintained that their ordinary meaning does not go so far as to include actual guilt of fraud. They have sought to justify by proving that an inquiry was in fact held, not by proving actual suspicion of fraud.

This is the gist of the whole case. Salmon J., who tried both pairs of actions, took the view that the words were capable of imputing guilt of fraud. Davies L.J. was inclined to the same opinion, and my noble and learned friend, Lord Morris of Borth-y-Gest, has expressed the same opinion as Salmon J. Holroyd Pearce L.J. and Havers J. took the contrary view. In view of this difference of judicial opinion, one naturally hesitates before expressing a concluded opinion of one's own, but after listening to many days of argument I am myself satisfied that the words cannot reasonably be understood to impute guilt. Suspicion, no doubt, can be inferred from the fact of the inquiry being held if such was the case, but to take the further step and infer guilt is, in my view, wholly unreasonable. This is to draw an inference from an inference and to take two substantial steps at the same time.

The distinction between suspicion and guilt is illustrated by the case of *Simmons* v. *Mitchell* [23] which decided that spoken words which convey a mere suspicion that the plaintiff has committed a crime punishable by imprisonment will not support an action without proof of special damage.

It has been argued before your Lordships that suspicion cannot be justified without proof of actual guilt on the analogy of the rumour cases such as *Watkin* v. *Hall.*[24] Rumour and suspicion do, however, essentially differ from one another. To say

[21] [1963] 1 Q.B. 299, 303.
[22] [1963] 1 Q.B. 309, 337–338.
[23] (1880) 6 App.Cas. 156, P.C.
[24] L.R. 3 Q.B. 396.

something is rumoured to be the fact is, if the words are defamatory, a republication of the libel. One cannot defend an action for libel by saying that one has been told the libel by someone else, for this might be only to make the libel worse. The principle as stated by Blackburn J. in *Watkin* v. *Hall*[25] is that a party is not the less entitled to recover damages from a court of law for injurious matter published concerning him because another person previously published it. It is wholly different with suspicion. It may be defamatory to say that someone is suspected of an offence, but it does not carry with it that that person has committed the offence, for this must surely offend against the ideas of justice which reasonable persons are supposed to entertain. If one repeats a rumour one adds one's own authority to it and implies that it is well founded, that is to say, that it is true. It is otherwise when one says or implies that a person is under suspicion of guilt. This does not imply that he is in fact guilty but only that there are reasonable grounds for suspicion, which is a different matter.

Having reached the conclusion that the innuendo should not have been left to the jury as a separate issue and that the natural and ordinary meaning of the words does not convey actual guilt of fraud, I agree with the Court of Appeal that there must be a new trial, for the learned judge left the question to the jury "Did they find for plaintiffs or defendants?" without a direction that the words were incapable of the extreme meaning which I have rejected.

I would not but for this misdirection as to the meaning of the words, have thought a new trial should be ordered simply because the innuendo was wrongly left to the jury, for no harm would have been done if there had been no misdirection as to the meaning of the words. The vital misdirection was as to the meaning which the plaintiffs sought to ascribe to the words. As to this, in a Scottish case, *Stubbs Ltd.* v. *Russell*,[26] Lord Kinnear said: "The law is perfectly well settled. Before a question of libel "or slander is submitted to a jury the court must be satisfied "that the words complained of are capable of the defamatory "meaning ascribed to them. That is a matter of law for the "court." This is also the law of England: compare *English and Scottish Co-operative Properties Mortgage and Investment*

[25] L.R. 3 Q.B. 396, 401.

[26] [1913] A.C. 386, 393; 29 T.L.R. 409, H.L.

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Society Ltd. v. *Odhams Press Ltd.*,[27] a case where there was a long paragraph of innuendoes suggesting various meanings to be attributed to the words complained of but no true innuendo supported by extrinsic facts. All the innuendo meanings were left to the jury and both Slesser L.J. and Goddard L.J. referred to the duty of the judge to withdraw meanings from the jury if the words are incapable of bearing such meanings.

I have mentioned this last point because at one stage of the argument it seemed that it might be contended that once the judge had ruled the words were capable of " any " as opposed to " the " defamatory meaning ascribed to them the jury were masters of the situation, but the contention I have adumbrated was not advanced before your Lordships and was expressly disclaimed by counsel in the course of the hearing before the Court of Appeal.

The responsibility of the judge to exclude a particular meaning which the plaintiff seeks to ascribe to words in their natural or ordinary meaning is, I think, clearly established by the decision of this House in *Capital and Counties Bank Ltd.* v. *Henty & Sons.*[28] Henty & Sons had sent out a circular to a number of their customers giving notice that they would not receive in payment cheques drawn on any of the vouchers of the bank. There was no evidence to support the innuendo that the words imputed insolvency to the bank, and it was held that in their natural and ordinary meaning the words were not libellous. Lord Blackburn said[29]: " Since Fox's Act at least, however the law may have " been before, the prosecutor or plaintiff must also satisfy a jury " that the words are such, and so published, as to convey *the* " libellous imputation. If the defendant can get either the court " or the jury to be in his favour, he succeeds. The prosecutor, or " plaintiff, cannot succeed unless he gets both the court and the " jury to decide for him."

Since, in my judgment, there must be a new trial in order that the jury in each pair of cases may be directed as to the natural and ordinary meaning of the words published in the two newspapers, I need say nothing on the question of damages except that I agree with the Court of Appeal that the damages were in each case so excessive that they cannot be allowed to stand. I also agree that as a result of the decision of your Lordships' House in

[27] [1940] 1 K.B. 440; 56 T.L.R. 195; [1940] 1 All E.R. 1, C.A.

[28] 7 App.Cas. 741.

[29] Ibid. 776.

British Transport Commission v. *Gourley*,[30] the jury in each case so far as the plaintiff company is concerned should have been directed that, since a company can only suffer in its pocket by loss of revenue attributable to a libel, so regard must be had to the fact that the profits of the company will in large measure be passed on to the Revenue and not retained for the benefit of the shareholders.

I am further of opinion that a direction should be given to the jury as to the effect of section 12 of the Defamation Act, 1952, which enables other claims by the plaintiffs to be disclosed to the jury with the object of preventing compensation being given twice over for the same libel, so that the jury should be directed to apply themselves to the injury inflicted in the particular case.

I would dismiss the appeal.

LORD DEVLIN. My Lords, the natural and ordinary meaning of words ought in theory to be the same for the lawyer as for the layman, because the lawyer's first rule of construction is that words are to be given their natural and ordinary meaning as popularly understood. The proposition that ordinary words are the same for the lawyer as for the layman is as a matter of pure construction undoubtedly true. But it is very difficult to draw the line between pure construction and implication, and the layman's capacity for implication is much greater than the lawyer's. The lawyer's rule is that the implication must be necessary as well as reasonable. The layman reads in an implication much more freely; and unfortunately, as the law of defamation has to take into account, is especially prone to do so when it is derogatory.

In the law of defamation these wider sorts of implication are called innuendoes. The word explains itself and is very apt for the purpose. In *Rex* v. *Horne* [31] De Grey C.J. said: "In the case "of a libel which does not in itself contain the crime, without "some extrinsic aid, it is necessary that it should be put upon "the record, by way of introduction, if it is new matter; or by "way of innuendo, if it is only matter of explanation. For "an innuendo means nothing more than the words, 'id est,' "'scilicet,' or 'meaning,' or 'aforesaid,' as, explanatory of a "subject-matter sufficiently expressed before."

An innuendo had to be pleaded and the line between an ordinary meaning and an innuendo might not always be easy to

[30] [1956] A.C. 185.

[31] 2 Cowp. 672, 684.

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draw. A derogatory implication may be so near the surface that it is hardly hidden at all or it may be more difficult to detect. If it is said of a man that he is a fornicator the statement cannot be enlarged by innuendo. If it is said of him that he was seen going into a brothel, the same meaning would probably be conveyed to nine men out of ten. But the lawyer might say that in the latter case a derogatory meaning was not a necessary one because a man might go to a brothel for an innocent purpose. An innuendo pleading that the words were understood to mean that he went there for an immoral purpose would not, therefore, be ridiculous. To be on the safe side, a pleader used an innuendo whenever the defamation was not absolutely explicit. That was very frequent, since scandalmongers are induced by the penalties for defamation to veil their meaning to some extent. Moreover, there were some pleaders who got to think that a statement of claim was somehow made more forceful by an innuendo, however plain the words. So rhetorical innuendoes were pleaded, such as to say of a man that he was a fornicator meant and was understood to mean that he was not fit to associate with his wife and family and was a man who ought to be shunned by all decent persons and so forth. Your Lordships were told, and I have no doubt it is true, that before 1949 it was very rare indeed to find a statement of claim in defamation without an innuendo paragraph.

I have said that a derogatory implication might be easy or difficult to detect; and, of course, it might not be detected at all, except by a person who was already in possession of some specific information. Thus, to say of a man that he was seen to enter a named house would contain a derogatory implication for anyone who knew that that house was a brothel but not for anyone who did not. In the passage I have quoted, De Grey C.J. distinguished between this sort of implication and the implication that is to be derived from the words themselves without extrinsic aid, and he treats the term "innuendo" as descriptive only of the latter. Since then the term has come to be used for both sorts of implication. Either sort had to be "put upon the record," as the Chief Justice said, and extrinsic facts had to be pleaded "by way of introduction," as he also said, or as a prefatory "averment," as it came to be called. Section 61 of the Common Law Procedure Act, 1852, did away with the necessity of pleading the prefatory averment, while leaving it necessary to plead the innuendo: the section provided that "the "plaintiff shall be at liberty to aver that the words or matter

" complained of were used in a defamatory sense, specifying such " defamatory sense without any prefatory averment."

My Lords, a system of pleading was built up on this basis which in 1949 was disconcerted by the introduction of a new rule —Ord. 19, r. 6 (2). The object of the rule was to require that extrinsic facts must not only be proved but pleaded, thus restoring the position before 1852. The object was simple enough. It is the language of the rule that has caused the difficulties which have recently been brought to a head and have been the subject of three decisions, including the present one, by the Court of Appeal. The sub-rule reads: " (2) In an action for libel or slander if the " plaintiff alleges that the words or matter complained of were " used in a defamatory sense other than their ordinary meaning, " he shall give particulars of the facts and matters on which he " relies in support of such sense."

The word " innuendo " is not used. But the effect of the language is that any meaning that does not require the support of extrinsic fact is assumed to be part of the ordinary meaning of the words. Accordingly, an innuendo, however well concealed, that is capable of being detected in the language used is deemed to be part of the ordinary meaning.

This might be an academic matter if it were not for the principle that the ordinary meaning of words and the meaning enlarged by innuendo give rise to separate causes of action. This principle, which originated out of the old forms of pleading, seems to me in modern times to be of dubious value. But it is now firmly settled on the authority of *Sim* v. *Stretch*,[32] and the House was not asked to qualify it. How is this principle affected by the new rule? Are there now three causes of action? If there are only two, to which of them does the innuendo that is inherent in the words belong? In *Grubb* v. *Bristol United Press Ltd.*[33] the Court of Appeal, disagreeing with some observations made by Diplock L.J. in *Loughans* v. *Odhams Press Ltd.*,[34] decided in effect that there were only two causes of action and that the innuendo cause of action comprised only the innuendo that was supported by extrinsic facts.

My Lords, I think, on the whole, that this is the better solution, though it brings with it a consequence that I dislike, namely, that at two points there is a divergence between the popular and the legal meaning of words. Just as the popular and

[32] 52 T.L.R. 669.
[33] [1963] 1 Q.B. 309.
[34] [1963] 1 Q.B. 299.

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legal meanings of "malice" have drifted apart, so the popular and legal meanings of "innuendo" must now be separated. I shall in the rest of my speech describe as a legal innuendo the innuendo that is the subject-matter of a separate cause of action. I suppose that it does not matter what terminology is used so long as it is agreed. But I do not care for the description of the popular innuendo as a false innuendo; it is the law and not popular usage that gives a false and restricted meaning to the word. The other respect is that the natural and ordinary meaning of words for the purposes of defamation is not their natural and ordinary meaning for other purposes of the law. There must be added to the implications which a court is prepared to make as a matter of construction all such insinuations and innuendoes as could reasonably be read into them by the ordinary man.

The consequence of all this is, I think, that there will have to be three paragraphs in a statement of claim where previously two have served. In the first paragraph the defamatory words will be set out as hitherto. It may be that they will speak for themselves. If not, a second paragraph will set out those innuendoes or indirect meanings which go beyond the literal meaning of the words but which the pleader claims to be inherent in them. Thirdly, if the pleader has the necessary material, he can plead a secondary meaning or legal innuendo supported by particulars under Ord. 19, r. 6 (2). Hitherto it has been customary to put the whole innuendo into one paragraph, but now this may easily result in the confusion of two causes of action and in consequent embarrassment. The essential distinction between the second and third paragraph will lie in the fact that particulars under the rule must be appended to the third. That is, so to speak, the hallmark of the legal innuendo. The pleader can, if he chooses, emphasise the character of the second paragraph by including in it some such words as were used in *Loughans'* case.[34] That case was, in my opinion, rightly decided and rightly distinguished from *Grubb's* case[35] by Upjohn L.J. in the latter case. Or the pleader can, as was suggested by Holroyd Pearce L.J. in *Grubb's* case,[36] plead in the second paragraph that the words in their natural and ordinary meaning were understood to mean one thing; and then he could plead in the third paragraph that by reason of the facts thereinafter particularised they were understood to mean another. The meanings alleged in the third paragraph can be the same as

[34] [1963] 1 Q.B. 299.
[35] [1963] 1 Q.B. 309, 331–332.
[36] Ibid. 329.

those alleged in the second paragraph if the pleader is relying upon the legal innuendo only as an alternative; or they can be different. But the essential thing is that if a paragraph is unaccompanied by particulars it cannot be a legal innuendo since for a legal innuendo particulars are mandatory and the innuendo cannot be proved without them.

It was suggested in argument that the division of the innuendo into two paragraphs would be awkward for the pleader. It is said that it may not always be easy to decide whether an extrinsic factor relied on is a matter of special knowledge, or whether it is just general knowledge in the light of which the ordinary, though indirect, meaning of the words has to be ascertained. I do not think that this should present any difficulty in practice. The pleader must ask himself whether he contemplates that evidence will be called in support of the allegation: if he does, it is a legal innuendo, and if he does not, it is not. If he is in doubt, he can plead in two paragraphs; and then if at the trial his opponent agrees or the judge rules that it is a matter of general knowledge, the legal innuendo can be dropped.

It was also suggested to your Lordships that the pleading of a middle paragraph was unnecessary and even improper, and your Lordships were told that since 1949 some judges have discouraged the pleading of all innuendoes that are not legal innuendoes. I should certainly like to see what I have called rhetorical innuendoes discouraged. But I am satisfied that the pleading of an innuendo in every case where the defamatory meaning is not quite explicit is at the least highly desirable, and I am glad to observe that in *Loughans'* case [37] the attempt to strike out the innuendo failed. An attempt of this sort is no doubt inspired by the thought that it is unnecessary to plead the ordinary meaning of words and that that is all that the popular innuendo is. I think that that thought is fallacious. It does not take into account the difference I have pointed out between the meaning of words in the law of defamation and their meaning for the general purposes of the law. In general the meaning of words is a matter of law and therefore need not be pleaded, though where there is a difficult question of construction in issue it is usual and convenient to do so. But in defamation the meaning of words is a question of fact, that is, there is libel or no libel according to the impression the words convey to the jury and not according to the construction put upon them by the judge.

[37] [1963] 1 Q.B. 299.

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I do not mean that ingenuity should be expended in devising and setting out different shades of meaning. Distinct meanings are what should be pleaded; and a reasonable test of distinctness would be whether the justification would be substantially different. In the present case, for example, there could have been three distinct categories of justification—proof of the fact of an inquiry, proof of reasonable grounds for it and proof of guilt. If no innuendo had been pleaded and there had been full proof of grounds for inquiry, I cannot think that in a closing speech the plaintiff could without any previous notice invite the jury to say that the words meant guilt and to reject the justification as insufficient. Moreover, where distinct meanings are possible and the judge is invited to rule separately on one or more, it is desirable that the meanings put to the jury should be on the record. But that touches on a point of substance which I shall consider later.

I understand your Lordships all to be of the opinion that the pleading of the ordinary or popular innuendo is permissible but do not intend that the House should rule on whether it is necessary. I agree that the point does not arise directly in this case, and therefore I, too, shall reserve my judgment on it. But I make the comment that if it is not necessary, it is nevertheless a form of pleading universally used from the earliest times until 1949, and I can see nothing in the new rule that should alter so well established a practice.

My Lords, I have made a very long preliminary to the consideration of the pleading point in this case. Your Lordships were invited from the Bar to deal in detail with all the difficulties of pleading involved in that point and that have recently come to the fore in other cases, and I have thought it right to do so. I must now state how in the light of what I have said generally I should decide the point at issue. Paragraph 4 of the statement of claim is as follows: "By the said words the defendants meant and were "understood to mean that the affairs of the plaintiffs and/or its "subsidiaries were conducted fraudulently or dishonestly or in "such a way that the police suspected that their affairs were so "conducted."

The Court of Appeal considered this paragraph to be defective, and I agree with them. This does not involve any sort of criticism of the learned pleader, who drafted his statement of claim at a time when it was possible to take almost any view of the points I have been canvassing. It is plain now that paragraph 4 must be treated as in form a plea of a legal innuendo. But in substance it is not a legal innuendo because no extrinsic

facts are pleaded: general knowledge is, as I have indicated already, not an extrinsic fact for the purpose of rule 6 (2), but is matter, not requiring to be proved, in the light of which the jury can interpret the publication. In substance the paragraph is a plea of a popular innuendo and the confusion between substance and form makes it embarrassing.

But I cannot, with respect, agree with the Court of Appeal that the way in which the judge treated this point is by itself a ground for a new trial. He went by the substance of the paragraph and left it to the jury as an ordinary innuendo, not a legal one. Perhaps he ought to have insisted on an amendment in the form, but he stated the course he was going to take and neither counsel offered any objection to it. I cannot think that the jury could have been in any way misled. There has been some discussion about whether the plaintiffs will have to amend before proceeding to a new trial. That is for them to say. In the light of all this discussion they would perhaps be wise not to take indulgence for granted.

I turn now to the main ground for ordering a new trial. This was that the judge misdirected the jury by failing to tell them that the words were not capable of bearing one or more of the defamatory meanings alleged in paragraph 4 of the statement of claim. It is admitted that the words are capable of some defamatory meaning, and I think it is undoubtedly defamatory of a company to say that its affairs are being inquired into by the police. But paragraph 4 alleges that the words meant "that the "affairs of the plaintiffs and/or its subsidiaries were conducted "fraudulently or dishonestly or in such a way that the police "suspected that their affairs were so conducted." This is saying that the words mean either that the plaintiffs were guilty of fraud or that they were suspected of fraud. If it is permissible to distinguish between these two meanings, then for reasons which I shall give as I proceed I should hold that the words are capable of the latter meaning but not of the former, and I should on this basis agree with the Court of Appeal that the jury should have been so directed and that, since they were not, there should be a new trial. But Mr. Milmo has submitted that it is not right so to distinguish.

In the first place, he relies on what are called the "rumour "cases." I agree, of course, that you cannot escape liability for defamation by putting the libel behind a prefix such as "I have "been told that . . ." or "It is rumoured that . . .", and then asserting that it was true that you had been told or that it was in

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fact being rumoured. You have, as Horridge J. said, in a passage that was quoted with approval by Greer L.J. in *Cookson* v. *Harewood*,[38] "to prove that the subject-matter of the rumour "was true." But this is not a case of repetition or rumour. I agree with the distinction drawn by Horridge J. on this point, though not necessarily with his limited view of the effect of the libel in that case. Anyway, even if this is to be treated as a rumour case, it is still necessary to find out what the rumour is. A rumour that a man is suspected of fraud is different from one that he is guilty of it. For the purpose of the law of libel a hearsay statement is the same as a direct statement, and that is all there is to it.

The real point, I think, that Mr. Milmo makes is that whether the libel is looked at as a statement or as a rumour, there is no difference between saying that a man is suspected of fraud and saying that he is guilty of it. It is undoubtedly defamatory, he submits, to say of a man that he is suspected of fraud, but it is defamatory only because it suggests that he is guilty of fraud: so there is no distinction between the two. This is to me an attractive way of putting the point. On analysis I think that the reason for its attraction is that as a maxim for practical application, though not as a proposition of law, it is about three-quarters true. When an imputation is made in a general way, the ordinary man is not likely to distinguish between hints and allegations, suspicion and guilt. It is the broad effect that counts and it is no use submitting to a judge that he ought to dissect the statement before he submits it to the jury. But if on the other hand the distinction clearly emerges from the words used it cannot be ignored. If it is said of a man—"I do not believe that he is "guilty of fraud but I cannot deny that he has given grounds "for suspicion," it seems to me to be wrong to say that in no circumstances can they be justified except by the speaker proving the truth of that which he has expressly said he did not believe. It must depend on whether the impression conveyed by the speaker is one of frankness or one of insinuation. Equally, in my opinion, it is wrong to say that, if in truth the person spoken of never gave any cause for suspicion at all, he has no remedy because he was expressly exonerated of fraud. A man's reputation can suffer if it can truly be said of him that although innocent he behaved in a suspicious way; but it will suffer much more if it is said that he is not innocent.

[38] [1932] 2 K.B. 478n., 485n., C.A.

It is not, therefore, correct to say as a matter of law that a statement of suspicion imputes guilt. It can be said as a matter of practice that it very often does so, because although suspicion of guilt is something different from proof of guilt, it is the broad impression conveyed by the libel that has to be considered and not the meaning of each word under analysis. A man who wants to talk at large about smoke may have to pick his words very carefully if he wants to exclude the suggestion that there is also a fire; but it can be done. One always gets back to the fundamental question: what is the meaning that the words convey to the ordinary man: you cannot make a rule about that. They can convey a meaning of suspicion short of guilt; but loose talk about suspicion can very easily convey the impression that it is a suspicion that is well founded.

In the libel that the House has to consider there is, however, no mention of suspicion at all. What is said is simply that the plaintiff's affairs are being inquired into. That is defamatory, as is admitted, because a man's reputation may in fact be injured by such a statement even though it is quite consistent with innocence. I dare say that it would not be injured if everybody bore in mind, as they ought to, that no man is guilty until he is proved so, but unfortunately they do not. It can be defamatory without it being necessary to suggest that the words contained a hidden allegation that there were good grounds for inquiry. A statement that a woman has been raped can affect her reputation, although logically it means that she is innocent of any impurity: *Yousoupoff* v. *Metro-Goldwyn-Mayer Pictures Ltd.*[39] So a statement that a man has been acquitted of a crime with which in fact he was never charged might lower his reputation. Logic is not the test. But a statement that an inquiry is on foot may go further and may positively convey the impression that there are grounds for the inquiry, that is, that there is something to suspect. Just as a bare statement of suspicion may convey the impression that there are grounds for belief in guilt, so a bare statement of the fact of an inquiry may convey the impression that there are grounds for suspicion. I do not say that in this case it does; but I think that the words in their context and in the circumstances of publication are capable of conveying that impression. But can

[39] (1934) 50 T.L.R. 581, C.A.

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they convey an impression of guilt? Let it be supposed, first, that a statement that there is an inquiry conveys an impression of suspicion; and, secondly, that a statement of suspicion conveys an impression of guilt. It does not follow from these two suppositions that a statement that there is an inquiry conveys an impression of guilt. For that, two fences have to be taken instead of one. While, as I have said, I am prepared to accept that the jury could take the first, I do not think that in a case like the present, where there is only the bare statement that a police inquiry is being made, it could take the second in the same stride. If the ordinary sensible man was capable of thinking that wherever there was a police inquiry there was guilt, it would be almost impossible to give accurate information about anything: but in my opinion he is not. I agree with the view of the Court of Appeal.

There is on this branch of the case a final point to be considered. It is undoubtedly the law that the judge should not leave the question "libel or no libel" to the jury unless the words are reasonably capable of a defamatory meaning. But if several defamatory meanings are pleaded or suggested, can the judge direct the jury that the words are capable of one meaning but not of another? The point is important here because the defendant admits that the words are defamatory in one sense but disputes that they are defamatory in the senses pleaded in the statement of claim and contends that the judge should have so directed the jury. Mr. Milmo and Mr. Duncan appear at one time to have argued in the Court of Appeal that the function of the judge was exhausted when he ruled that the words were capable of being defamatory and that it was not for him to inquire whether they were or were not capable of any particular defamatory meaning. But later they abandoned the point and therefore did not initiate the discussion of it here. Nevertheless there was considerable discussion of it because some of your Lordships at one time felt that it was a point which ought to be considered.

In the result I think that all your Lordships are now clearly of the opinion that the judge must rule whether the words are capable of bearing each of the defamatory meanings, if there be more than one, put forward by the plaintiff.

This supports indirectly my view on the desirability of pleading different meanings. If the plaintiff can get before the jury only those meanings which the judge rules as capable of being defamatory, there is good reason for having the meanings alleged set out precisely as part of the record.

For the reasons I have given earlier, I agree that there must be a new trial on the ground of misdirection: but I should in any event have considered that there should be a new trial on the issue of damages as they are, in my opinion, ridiculously out of proportion to the injury suffered.

Appeal dismissed.

Solicitors: *Zeffertt, Heard & Morley Lawson; Simmons & Simmons; Swepstone, Walsh & Son.*

F. C.

LOUIS STEEN AND ANOTHER . . . . . APPELLANTS;

AND

CHARLES ALLEN LAW, LIQUIDATOR OF INTERNATIONAL VENDING MACHINES PTY. LTD. . . . . RESPONDENT.

P. C.*
1963
Oct. 2.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES IN ITS EQUITABLE JURISDICTION.

Australia — New South Wales — Company — Loan by company for purchase of its own shares — Statutory illegality — Liability of directors to repay—Ignorance of law no defence—Exemption where loan made in ordinary course of company's business of money-lending—Definition of such lending—Saving of tax by company not the result of the illegal loan—No set off against directors' liability —Companies Act, 1936 *(New South Wales), s.* 148 (1), *proviso (a).*
Company—Director—Action against—Parting illegally with money—Ignorance of law no defence—Loan by company for purchase of shares.

By section 148 of the Companies Act, 1936, of New South Wales: "(1) . . . it shall not be lawful for a company to give . . . by means "of a loan . . . any financial assistance for the purpose of . . .

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* *Present*: VISCOUNT RADCLIFFE, LORD JENKINS, LORD MORRIS OF BORTH-Y-GEST, LORD GUEST and SIR KENNETH GRESSON.