

(1909) 07 CAL CK 0022
In the Calcutta High Court

Lala Lajpat Rai

APPELLANT

Vs

The "Englishman" Ltd. and Others

RESPONDENT

Date of Decision : 06-07-1909

Acts Referred:

Citation : 3 Ind. Cas. 224

Hon'ble Judges : Fletcher, J

Bench : Single Bench

Judgement

Fletcher, J.—This is a suit by the plaintiff to recover against the defendants (who are the proprietors, the editors and the printer and publisher of a daily newspaper called the Englishman, published in Calcutta) damages for an alleged libel on the plaintiff published in the Englishman on the 10th September 1907.

2. The plaintiff is a pleader practising in the Chief Court of the Punjab at Lahore, where he appears to enjoy a considerable professional reputation. The plaintiff has also identified himself with various religious and charitable movements. In politics also the plaintiff has taken an active part, and for some years he has been one of the foremost members of the Indian National Congress.

3. The plaintiff's position in the Punjab may be from the evidence described as that of a man of considerable importance and influence.

4. In the next place, it will be convenient to give a brief account as appearing from the evidence of the material facts preceding the publication of the alleged libel.

5. In the year 1907, there was pending before the Punjab Legislative Council a Bill called the Canal Colonisation Bill. The provisions of this Bill had, rightly or wrongly, given rise to very considerable resentment amongst certain classes of the people of the Punjab. It was said on behalf of the opponents of the Bill that the Bill proposed to alter the provisions of the agreements which had been entered into by the Government and that such alterations were detrimental to the interests of the colonists. Amongst the colonists were some or perhaps a

considerable number of military pensioners and it is also in evidence that a large proportion of the sepoys in the Punjab are drawn from persons engaged on the land.

6. An agitation against the Bill was set on foot, and the plaintiff interested himself in the opposition to the Bill. There was at this time in the Punjab one Ajit Singh, who was also taking a leading part in the opposition to the Bill. He has been described in certain articles in the Englishman as the lieutenant" of the plaintiff.

7. The plaintiff has denied on oath that he was in any way associated with Ajit Singh and his statement being uncontradicted must, at any rate for the purpose of this case, be accepted. The plaintiff, however, admits being acquainted with Ajit whom he knew through his brother Kissen Singh and the manner in which he made Ajit's acquaintance was by reason of Kissen being the manager of an orphanage, with which the plaintiff was identified.

8. There was at Lahore an Association of zemindars and the plaintiff, in March 1907, was approached by a Mahomedan gentleman who was the Secretary of this Association with a view to the plaintiff attending a meeting proposed to be held at Layallpur on 27th of March 1907, to protest against the Bill. The plaintiff was at first" unwilling to accede to the request that he should attend this meeting as he had recently suffered a severe domestic bereavement by the death of his son-in-law and also on the ground that his own health was not good. The Secretary, however, prevailed upon the plaintiff to agree to attend the meeting and accordingly a meeting of the Association was summoned to appoint a deputation to be present at the meeting. Whether the plaintiff formed one of the deputation or whether the deputation was appointed to accompany the plaintiff to the meeting, the plaintiff is unable to recollect.

9. On the 27th of March, the plaintiff and the members of the deputation proceeded to Layallpur to attend the meeting. On their arrival at the place of the meeting at about 11 o'clock, they found Ajit Singh addressing a large crowd. The plaintiff says, one of the members of the deputation made a protest to Ajit Singh as to his "addressing the meeting before it had been properly opened. The meeting was then opened. The plaintiff says, he was not an office-bearer at the meeting and, therefore, had no right to determine who should address the meeting. The plaintiff addressed the meeting twice and had a hand in settling the address which was forwarded from the meeting to His Excellency the Viceroy, protesting against the provisions of the Bill. Ajit Singh also addressed the meeting. The plaintiff says, Ajit used "strong words," both against the Bill and the Government, but he does not think he was guilty of uttering seditious language. The plaintiff says, he is not aware that any soldier was present at the meeting but admits that military pensioners were present. The plaintiff's evidence is that this was the only meeting at which he appeared on the same platform as Ajit Singh. As to the meetings at Rawalpindi and Ferozepore, which have been referred to during the progress of this case and were also referred to

in the proceedings in Parliament, the plaintiff says, as to the meeting at Rawalpindi, he knew nothing about the meeting until sometime after it had been held, and as to the meeting at Ferozepore, the plaintiff says he does not know even now whether this meeting was ever in fact held.

10. On the 9th of May 1907 the Governor-General in Council acting under the provisions of Regulation III of 1818 (as extended to the Punjab by Act IV of 1872) deported the plaintiff and Ajit Singh and confined the plaintiff in the Mandalay jail.

11. There can be little doubt that at the time of the deportation of the plaintiff there was considerable political unrest in the Punjab.

12. In passing, I may state that the Canal Colonisation Bill, after passing through the Punjab Legislative Council, was vetoed by the Governor-General in Council. Almost immediately following the deportation of the plaintiff, questions were put in the House of Commons with reference thereto. The answers of the Secretary of State to such questions and his speech to the House on the occasion of the debate on the Indian Budget have formed the sole evidence which the defendants have relied upon in this suit.

13. Sometime prior to the 10th of September 1907, but on what exact date I have not been informed, the Secretary of State made a statement in Parliament which has been called a half promise for the release of Lajpat Rai." In the issue of the Englishman of the 10th of September 1907, appeared the libel complained of.

14. The alleged libel forms a portion of an article numbered X which is one of a series of articles purporting to come from a correspondent "in the Punjab Hills" and is in the following terms:

It is about time now that the true facts as to the deportation of Lala Lajpat Rai were given out. Last year the native officers of several of the native regiments in the Punjab confidentially reported to their Commanding Officers that persistent efforts were being made to tamper with the loyalty of the sepoys. In due course, the Commanding Officers reported this to the higher Military authorities. At the beginning of this year, the native officers of almost every native regiment reported to their Commanding Officers that the provisions of the Canal Colonies Bill were being used most effectively by the agitators to inflame the sepoys against the Government, and in this connection the names of Lajpat Rai and Ajit Singh were given as the principal agitators. It must be remembered that the Canal Colonists are mostly old soldiers, therefore, in close touch with the sepoys. The native officers further urged that unless the provisions of the Canal Colonies Legislation were vetoed, they could not answer for the loyalty of the native army in the Punjab. The Commanding Officers confidentially told Lord Kitchener that unless the Canal Colony Legislation was vetoed, and Lala Lajpat Rai and Ajit Singh arrested, they could not answer for the loyalty of the Native Army in the Punjab. Lord Kitchener lost no time in seeing Lord Minto, and the latter at once

telegraphed to the Civil authorities in the Punjab for corroboration of these alarmist reports. The Civil authorities at Lahore were already in a panic as to the occurrences at Layallpur and promptly confirmed all Lord Kitchener's statements, but they demurred to the vetoing of the Canal Colonies Legislation, and said the deportation of Lajpat Rai and Ajit Singh would be sufficient. Lord Minto was inclined to side with the Civil authorities in the Punjab but Lord Kitchener put his foot down and said that if the Canal Colony Legislation was not vetoed and Lajpat Rai and Ajit Singh deported, he would resign as a protest. As neither Lord Minto nor Mr. Morley dared allow Lord Kitchener to resign, the Canal Colonies Legislation was promptly vetoed, and Lajpat Rai and Ajit Singh deported. I assert the truth of these statements in spite of any official denials. A long residence in India has taught me that between an official denial and a terminological inexactitude there is a distinction without any real difference. Anyway these statements explain the silence of Mr. Morley about Lajpat Rai under the daily heckling he has endured in Parliament for months past. My only reason for now publishing these statements is the half promise given by Mr. Morley in Parliament for the release of Lajpat Rai. That Lajpat Rai has been guilty of tampering with the loyalty of the Punjab sepoy, there can be no possibility of doubt, and, therefore, his release for years to come would only be a dangerous act of criminal folly. The very virtues of Lajpat Rai only make him more dangerous; and it is only the half-religious, half-political fanatics of this half-sane, half-mad brand that are always the most dangerous conspirators.

15. On the 17th of November 1907, the plaintiff was released by order of the Governor-General in Council, and on the 6th of February 1908, the attorneys for the plaintiff wrote to the defendants demanding an apology for the statement mentioned above and compensation for the injury done to the plaintiff. To this letter none of the defendants sent any reply. Accordingly, on, the 24th of April 1908, the plaintiff instituted the present suit claiming Rs. 50,000 as damages. The defendants filed their written statements on the 6th of June. By such written statements, the defendants pleaded (a) that the statement complained of, in so far as it consists of allegations of fact, was true in substance and in fact and was published in the belief that such statements were true; and (b) in so far as the statement consists of expression of opinion, the same was a fair comment made in good faith without malice, on a matter of public interest and importance. Almost immediately after the leading counsel for the plaintiff had opened his case, Mr. Norton, the leading counsel for the defendants, stated that he did not intend to proceed with the plea of justification, but applied for leave to amend the written statement by setting up a plea of privilege.

16. This application I refused on the following grounds : First, that it would be manifestly unfair to the plaintiff to allow the defendants after the trial had commenced to raise a new defence of which the plaintiff had not notice; secondly, it was not shown in what manner the defendants could claim privilege or that they had any greater right to comment on the actions of the plaintiff than any other of His Majesty's subjects; and, thirdly, that I noticed that the written

statements which were filed as long ago as the 6th of June 1908, were settled by Mr. Norton in conference and I considered that the proposed plea of privilege was purely an after-thought which it was desired to raise when it was found by the defendants that the plea of justification would have to be abandoned. Now the case for the defendants has been put by Counsel in the following way:

First, Mr. Norton has admitted that the article from its commencement down to and including the sentence "As neither Lord Minto nor Mr. Morley dared allow Lord Kitchener to resign, the Canal Colonies Legislation was promptly vetoed and Lajpat Rai and Ajit Singh deported," is a statement of facts. But Mr. Norton says, notwithstanding the fact that he is not proceeding with his plea of justification and, therefore, these facts, so far as they relate to the plaintiff, are presumed in law to be untrue, yet, as the defendants drew their facts from a public document, they are to be held excused and not liable to be responsible for the untrue facts stated in the article. The public document relied on is Hansard's report of Parliamentary Debates published under the authority of the House of Commons. The argument on this branch of the case may shortly be summarised as follows: "True, we; the defendants, now admit that the statements of fact in our article are untrue but we were misled by the statements made by the Secretary of State in Parliament and published in Hansard "from which source we drew our untrue statements, and, therefore, we ought to be excused." The second branch of Mr. Norton's argument is on the remainder of the article. This portion of the article, he says, consists solely of comment and further that the comment is fair and bona fide on the facts set out in the previous portion of the article.

17. I will now deal with the two branches of Mr. Norton's argument.

18. On the first branch of the case, it will be convenient to state the law as to privilege as to statements made in Parliament. The statements made by Members in the House are absolutely privileged, and this privilege would, of course, apply to the statements and speeches made by the Secretary of State and other Members in the House of Commons with reference to the deportation of the plaintiff. Farther, since the decision of *Wason v. Walter* (1868) L.R. 4 Q.B. 73: 38 L.J.Q.B. 34 it has not been doubted that a fair and accurate report of the proceedings is privileged even though defamatory, but this privilege is limited to report of the proceedings. It would be a very wide extension of this privilege to hold it to cover any independent statement of facts drawn from Hansard" or any other report of the proceedings in Parliament. The proposition is an alarming one-take, for instance, the case of any Member of the House, carried away by party feeling, making statements imputing dishonourable or discreditable conduct to a particular individual. Is it forsooth to be said that every member of the public, by reason of the fact that the statement was made in Parliament and subsequently published in Hansard," is entitled to impute to that individual that he has been in fact guilty of the dishonourable conduct that was imputed to him by some Member in Parliament? And, in the event of the person so defamed coming to Court for redress, is he to be met with a plea that the statement was made in

Parliament and subsequently published in Hansard." and, therefore, notwithstanding that the defendant admits that the statement is untrue, that the plaintiff is to be deprived of this remedy and ruled out of Court solely on the ground that the statement is drawn from Hansard?" I have not been able to find any statement of the law that would in any way warrant such a proposition, and I am convinced that such is not the law. And yet, this is the sole defence to the first part of the article. It would be sufficient for me, therefore to hold that the plea raised by the defendants as to the first portion of the article complained of is bad in law. Having regard, however, to the course this trial has taken, I propose to examine briefly whether the statements in the first portion of the article could in fact have been drawn from the statements made in Parliament as reported in Hansard." Now, the defendants are met in limine with this difficulty-the writer opens with a statement-" It is about time now that the true facts as to the deportation of Lala Lajpat Rai were given out." That statement is only susceptible of one meaning, namely, that the facts as theretofore given out were not the "true" facts and that the writer intended to divulge, from some source or other, the facts that he says are true. It is agreed that the only facts that had been given out" at that date were the statements made in Parliament which the writer implies are not the "true" facts. The defendants are, therefore, in this difficulty-the writer says that the facts as given out in Parliament are not the true facts and that he is about to give to the public the true facts; notwithstanding this statement, the counsel for the defendants has argued that the writer drew his facts which he says are true" from the facts which the writer implies are not true. This of itself would be a serious difficulty against assenting to the argument that the statements in the article were drawn from the reports in "Hansard." As considerable stress, however, has been placed on this point by the counsel for the defendants, I will examine briefly the statements in the article and compare them with the report in Hansard." Now, in the first place, did the Secretary of State give out in Parliament in detail the circumstances under which the Government of India thought fit to deport the plaintiff? Look at the report in Hansard" of the proceedings in the House On the 18th of June and read the answer to a question by Mr. O'Grady. I have already said,"-answers the right, honourable gentleman" almost too often in, answer to my honourable friend and to one or two honourable" gentlemen below the gangway on this side, that it is entirely adverse to public interest to go into details as to the circumstances in which the Government of India with my full assent thought justified in the application of this law-the law of the land." And yet, in face of this statement, it has been argued that the writer drew these minute details of the circumstances relating to the deportation from the statements of the Secretary of State as reported in "Hansard." But, says the counsel for the defendants, even if they cannot show that the writer drew all his facts as to the circumstances relating to the deportation of the plaintiff from the reports in ""Hansard," yet he can show that the writer drew from that source the fact that the plaintiff inflamed the sepoys against the Government, which, he, says, is the only statement defamatory of the plaintiff. But the passage relied upon by counsel does not

support his argument. That passage is taken from the Secretary of State's speech of the Indian Budget of which, the report is as follows :-"in this agitation, it is stated, special attention has been paid to the Sikhs who, as the House is aware, are among the best soldiers in India and, in case of Layallpur, to the military pensioners." The Secretary of State obviously, carefully guarded himself from giving this statement out as a fact but only as a report, though, no doubt, report, which he had no reason to question or doubt. This is the only statement in "Hansard" to which counsel has been able to call attention as to the tampering with the loyalty of the Sikhs. The statement in Hansard" falls far short of a statement that in fact the plaintiff had tampered with the loyalty of the Sikhs.

19. Now, if the article complained of is looked into, it will be seen that the writer" opens with a statement of what happened last year," i.e., 1906, as to certain confidential reports passing between certain Military authorities and then the writer proceeds to give a close detail of what happened in 1907 as to reports from one Military authority to another until the reports reach the Commander-in-Chief. Next comes a most minute description of the action of Lord Kitchener on receiving these reports and of the action of His Excellency the Viceroy after an interview with Lord Kitchener, and the writer professes to be so fully acquainted with these details that, not only does he inform the public that His Excellency the Viceroy communicated with the Punjab Civil authorities, but he also gives the purport of the message for corroboration" and the mode by which it was sent-"telegraphed."

20. The article then gives the reply of the Punjab Government which the public are told was sent promptly" and the state of mind of the Viceroy after receiving that reply, namely, that the Viceroy was inclined to side" with the Punjab Government. But this view of the case, says the writer, was not in accordance with Lord Kitchener's views who put his foot down" and said that unless the Canal Colony Legislation was "promptly" vetoed and the plaintiff and Ajit Singh deported, "he would resign as a protest." Now, where in "Hansard" is there a single statement as to there being confidential reports between the various military authorities or as to the contents of those or as to the attitude of the Viceroy or Lord Kitchener? The next statement in the article is one of such an extraordinary nature that I will set it out in full:- As neither Lord Minto nor Mr. Morley dared allow Lord Kitchener to resign, the Canal Colony Legislation was promptly vetoed and Lajpat Rai and Ajit Singh deported." And yet the defendants say that the statements in this article were drawn from the reports in "Hansard." If the writer had before him Hansard's" reports as alleged by the defendants, he could not have failed to notice the following statement of the Secretary of State :--"Nobody appreciates," says Mr. Morley, "more than I do, the danger, the mischief and the iniquity of what is called "Reason of State."" Nevertheless, in view of this statement, which the defendants say was before the writer, he does not hesitate to charge His Majesty's principal adviser on Indian affairs with having concurred in an act which he knew to be "a danger, a mischief and an iniquity" and only to be resorted to with a sense of the gravest responsibility,

solely because he "dared not allow Lord Kitchener. to resign," A more reckless statement than this, it is impossible to imagine, and unsupported as it is by a little of evidence, it is difficult to say whether it is more libellous on the Viceroy, Lord Morley or Lord Kitchener.

21. But, says counsel for the defendants, even if this statement is untrue, it has nothing to do with the present case. With that view, I am wholly unable to agree. The statement establishes conclusively that the statements in the article were not drawn from "Hansard," and also the recklessness of the statements made by the writer.

22. It is only necessary before parting with the first branch of the case to call attention to the statement of the writer in which he asserts the truth of his statements in spite of official denials" and calling attention to the fact that there was little, if any, difference between an official denial" and a terminological inexactitude." In face of this statement, counsel for the defendants asked me to hold that the writer was not putting forward the statements in the article as true within his own knowledge, but only as being drawn from "Hansard"s" reports. I decline to do so, and must judge the writer by the language used.

23. I accordingly find as a fact that the statements in this article were not drawn from statements of Parliamentary reports in Hansard" and, secondly, even if they were, the statements are not a fair and accurate report of proceedings in Parliament so as to give to the defendants the protection they now claim for the same.

24. The defendants having withdrawn the plea of justification, I must take it that the statements in the article are untrue.

25. I now come to deal with the second branch of the case, namely, that the second portion of the article is a fair comment on a matter of public interest and importance. Before dealing with the facts on this portion of the case, it will be convenient to consider briefly what are the limits of the right of fair comment on matters of public interest and importance. And in this respect, the first authority I would refer to is the judgment of the Privy Council in the case in *Daveis v. Shepstone* (1886) 11 App. Cas. 187 which was delivered by the late Lord Hershell, where he laid down the law in the following terms: There is no doubt that the public acts of a public man may lawfully be made the subject of fair comment or criticism not only by the press but by all the members of the public. But the distinction cannot be too clearly borne in mind between comment or criticism and allegations of fact such as that disgraceful acts have been committed or discreditable language used. It is one thing to comment upon or criticise even with severity the acknowledged or proved acts of a public man and quite another to assert that he has been guilty of particular acts of misconduct."

26. In *Popham v. Pichburn* (1862) 7 H. & N. 891 it is said: (Wilde, B.)-"It was contended that this libel might be justified as a matter of public discussion on a matter of public interest. The answer is: This is not a discussion or comment. It

is a statement of a fact. To charge a man incorrectly with a disgraceful act is very different from commenting on a fact relating to him truly stated."

27. I will only refer to one other case, as it is the most recent authority on this point. The case is that of *Peter Walker and Son v. Hodgson* (1909) 1 K.B. 239 which was recently decided by the Court of Appeal in England.

28. The Court in that case considered the various earlier authorities and Vaughan Williams, L. J., in course of his judgment, first lays down that the law is now well-settled that fair comment is not a breach of privileged occasion and then proceeds to quote with approval the judgment of Lord Collins, then Master of the Bolls, in the case of *Digby v. Financial News* (1907) 1 K.B. 502 : 76 L.J.K.B. 321 : 96 L.T. 172 : 23 T.L.R. 117 in the following terms Comment, in order to be fair, must be based upon the facts, and if a defendant cannot show that his comments contain no mis-statements of fact, he cannot prove a defence of fair comment.... If the defendant makes a mis-statement of any of the facts upon which he comments, it at once negatives the possibility of the comment being fair. It is, therefore, a necessary part of a plea of fair comment to show that there has been no mis-statement of facts in the statement of the materials upon which the comment was based." And the same learned Lord Justice quotes, also with approval, a judgment of Lord Justice Fletcher Moulton in the case of *Hunt v. Star Newspaper Co. Ltd.* (1908)2 K.B. 309 : 77 L.J.K.B. 732 : 98 L.T. 629 : 24 T.L.R. 452 where the law was defined in these terms:-"in order to give room for the plea of a fair comment the facts must be truly stated. If the facts upon which the comment purports to be made do not exist the foundation of the plea fails,"

29. There is only one other statement that I will refer to in the judgment of the Court of Appeal in *Peter Walker & Sons v. Hodgson* (1909) 1 K.B. 239 because I think it states shortly and in ordinary language the limits of the plea of fair comment. At the top of page 257 of the report *Peter Walker and Sons v. Hodgson* (1909) 1 K.B. 239; Kennedy, L.J. quotes-with approval from the judgment of Lord Collins in *Thomas v. Bradbury, Agnew & Co. Ltd.* (1906) 2 K.B. 627 : 75 L.J.K.B. 726 : 95 L.T. 23 : 54 W.R. 608 : 22 T.L.R. 656 where Lord Collins makes the following statement of the law, namely, that the plea of a fair comment " does not extend to cover mis-statements of facts however bona fide."

30. Now turn to the portion of the article which. Mr. Norton says is fair comment. The first statement that Mr. Norton says is a comment is in the following terms:- That Lajpat Rai has been guilty of tampering with the loyalty of the Punjab sepoy there can be no possibility of doubt." That this statement imputes to the plaintiff the commission of an offence punishable u/s 131 of the Indian Penal Code with transportation for life is not doubted. Mr. Norton has argued that this statement, though defamatory, is a fair comment and, therefore, ought to be excused. It appears to me that there are two answers to the argument which may be given very shortly. The first is one drawn from the authorities cited by me above, namely, that, if the facts are misstated, it at once negatives the possibility of the comment being fair. The facts as stated in the article have already been held by

me for the purpose of this case to be untrue it follows that the comment cannot be fair. The second answer to that argument is one founded on the decision of this Court in the case of *Barrow A.S. v. Hem Chunder Lahiri* 12 C.W.N. 490 : 35 C. 495 to which decision I was a party. The Court decided there that imputing to a person of commission of a criminal offence does not fall within the range of fair comment. On both these grounds, I am of opinion, that the plea of fair comment fails.

31. It only remains for me now to assess the damages to be paid by the defendant to the plaintiff.

32. Now, the words used concerning the plaintiff in the present case are of a particularly serious nature and are libellous per se. The general damages presumed to be the natural or probable consequences of the words used need not be proved by evidence. The fact that the libel was published in a newspaper is an important consideration in assessing the damages. As Best, C. J., said in *De Crespigny v. Wellesley* (1823) 5 Bing. 392 : 30 Rev. Rep. 665 publication in a newspaper may circulate the calumny through every region of the globe. The effect of this is very different from that of the repetition of oral slander. In the latter case, what has been said is known only to a few person, and if the statement be untrue, the imputation cast upon any one may be got rid of; the report is not heard of beyond the circle in which all the parties are known, and the veracity of the accuser, and the previous character of the accused, will be properly estimated. But if the report is to be spread over the world by means of the press, the malignant falsehoods of the vilest of mankind, which would not receive the least credit where the author is known, would make an impression which it would require much time and trouble to erase, and which might be difficult, if not impossible, ever completely to remove (at p. 405). Before he gave it general notoriety by circulating it in print he should have been prepared to prove its truth to the letter; for he had no more right to take away the character of the plaintiff, without being able to prove the truth of the charge that he had made against him, than to take his property without being able to justify the act by which he possessed himself of it. Indeed., if we reflect on the degree of suffering occasioned by loss of character, and compare it with that occasioned by loss of property, the amount of the former injury far exceeds that of the latter."

33. Moreover, in assessing the damages the whole conduct of the defendants from the time of the libel down to the time of judgment should be looked into [per Lord Esher, M.R. in *Prasad v. Graham* (1889) 24 Q.B.D. 53 : 59 L.J.Q.B. 230 : 38 W.R. 103 and evidence may be given as to antecedent labels on the plaintiff to show with what mind the words were published.

34. Now, what has been the conduct of the defendants in the present case? Libels antecedent to the one now complained of have been published in the prior issues of the *Englishman*. Expressions most highly defamatory of the plaintiff were used in these former articles. We find, for example, that in one of these articles the plaintiff is described as an arch conspirator." We have also the fact

that a letter demanding an apology was written to the defendants before suit and to this letter they made no reply. Doubtless this letter demanded compensation to be paid by the defendants. But I cannot see any reason why, if they could not prove the statements, they should not have apologised whilst declining to pay the compensation demanded. This refusal or neglect to answer the letter demanding an apology, followed by the defendants placing on the record a plea of justification which was not withdrawn until after the trial was commenced, must naturally go to increase the damages. And the fact that no expression of regret for the language has even now been made by the defendants ought also to be taken into consideration. Nor must the conduct of the defendants in publishing this libel without, so far as appears in the evidence, making any enquiry,, as to what source the writer obtained his alleged facts from be neglected, for, it must have been apparent to the defendants that, if the statements contained in the article were" in fact true, the writer must have obtained them through some unauthorised channel. It would have been open to the defendants, if the plaintiff is a well-known revolutionary or seditionist, to have called evidence in reduction of damages to prove the plaintiff's general bad character. No such evidence having been produced, I must assume that no such evidence is forth-coming. There remains to be considered what effect (if any) in mitigation of damages the fact" that the plaintiff was deported ought to have.

35. Now, the preamble of Regulation ITI of 1818 recites that reasons of State "occasionally render it necessary to place under personal restraint individuals against whom there may not be sufficient ground to institute any judicial proceeding or when such proceeding may not be adapted to the nature of the case or may for other reasons be unadvisable or improper." "Therefore, under the terms of this Regulation, the Governor-General in Council may, for reasons of State, place under personal restraint not only persons against whom there is no sufficient ground for instituting a judicial proceeding, but also persons against whom the instituting of judicial proceedings would be improper. That the reasons for the determination are kept secret, both from the person deported and the public, sufficiently appears from the third recital in the preamble: And whereas the ends of justice require that the person affected thereby (i.e., the determination of the Governor-General in Council to place a person under restraint) should at all times be allowed freely to bring to the notice of the Governor-General in Council all circumstances relating to the supposed grounds of such determination." Is it to be suggested, in these circumstances, where neither the plaintiff nor the public know the reasons for his deportation and where the only evidence before the Court is the plaintiff's own positive testimony that he has been guilty neither of sedition nor of tampering with the! loyalty of the troops, that the Court should take into consideration, in reduction of damages, the fact that the plaintiff has been deported on evidence affecting his general character and reputation? I think not. It would, in my opinion, be contrary to the spirit of Regulation to take the fact of the deportation into consideration in assessing the damages.

36. It may be that one of the reasons the framers of the Regulation had in view in providing that the reasons for the deportation should not be disclosed was to protect the deported person from having the fact of the deportation put against him in evidence as affecting his general character and reputation. For, if two different inferences are by the terms of the Regulation capable of being drawn from the fact that the plaintiff was deported—one, that he had been deported for the commission of a criminal offence, the other, that he had been deported not for having committed any offence but in order to maintain the tranquility of the country. I think the Court is not at liberty to presume that the plaintiff was deported for the commission of a criminal offence. Moreover, it would be a gross hardship on the plaintiff if the fact of his deportation was admissible in evidence as affecting his general character; for the plaintiff, not knowing the reasons for his deportation, is absolutely debarred from showing that the Governor-General in Council made a mistake (if the plaintiff was deported for any special reason other than that of maintaining the tranquility of the country) as to the reasons they thought fit to deport him. The more I study the Regulation, the more convinced I am that the framers of the Regulation never intended that the fact of a person having been deported under the provisions thereof should be admitted in a Court of law as evidence affecting the character of the person deported. In these circumstances, I do not intend to take into consideration as a ground for mitigation of damages the fact that the plaintiff was deported.

37. I have reviewed now fully the serious nature of the charge made against the plaintiff, the reckless statement of facts on which it is founded, the setting up by the defendants of a plea of justification, which was not withdrawn until after the trial had opened, and that no expression of regret has been made by the defendants. It only remains to call attention to the motive that the writer had in view, namely, to raise in the minds of the public a sense of the danger and insecurity they would be in if the plaintiff was "released for years to come." The writer has endeavoured to give effect to that motive by giving to the public facts, which are now admittedly false, and comments,, which I hold to be unfair.

38. In these circumstances, I think, the damages to be awarded must be very substantial ;to do otherwise would, I think, after the course the defendants have been fit to adopt in this case, be wholly wrong.

39. Having taken into consideration the whole of the circumstances, I think, I ought to award to the plaintiff the sum of Rs. 15,000 as damages, and I give judgment accordingly for the plaintiff for that sum.

40. The defendants must pay to the plaintiff his costs of this suit on scale No. II.