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(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

DESMOND J DOHERTY, GREGORY McCARTNEY and PADRAIG MacDERMOTT

Plaintiffs

and

TELEGRAPH GROUP LIMITED

Defendant

AND

BETWEEN:

MITCHEL McLAUGHLIN and MARY LOU McLAUGHLIN

Plaintiffs

and

JEANETTE OLDHAM and CENTURY NEWSPAPERS LIMITED

Defendant

KERR J

Introduction

Applications have been made by the defendants in these actions for orders under Order 82 rule 3A of the Rules of the Supreme Court (Northern Ireland) 1980 and for orders under Order 18 and Order 22. The cases give rise to similar issues and were heard together.

Background

(i) to the claim by Mr Doherty, Mr MacDermott and Mr McCartney

Desmond Doherty, Padraig MacDermott and Gregory McCartney are solicitors who act on behalf of families of victims at the Bloody Sunday Inquiry. By proceedings commenced on 5 July 1999 they claim damages for libel contained in a number of articles published by the defendant, Telegraph Group Ltd, in the10 and 11 June 1999 issues of the Daily Telegraph newspaper.

The text of the first of these articles was as follows :-

> "**Names of Bloody Sunday soldiers revealed**
> By Andrew Sparrow Political Correspondent
>
> The Bloody Sunday Inquiry was criticised last night after admitting that it may have revealed the identity of five soldiers involved in the 1972 shooting.
>
> The Tories said it was `scandalous' that Lord Saville's team might have put at risk the lives of the five men, who were named in legal documents supplied to the relatives of the Bloody Sunday victims.
>
> The controversy will also infuriate other members of the Parachute Regiment who are today launching a judicial review against Lord Saville's decision that they will not be allowed to give evidence to his inquiry anonymously.
>
> The five – four officers and an NCO – were named in documents collected 27 years ago by Lord Widgery's investigation into the incident that left 13 people dead.
>
> These were among a set of 73 papers that we handed over to solicitors of the victims' families last autumn. At the time, Lord Saville believed that the documents had all been in the public domain.
>
> However, lawyers acting for the former soldiers have said that one of these items might not have been published before and that as a result the five men named could have been put at risk of reprisal.
>
> The Conservative MP Gerald Howarth raised the matter in the Commons yesterday, but the Inquiry team could not give an assurance last night that it had not endangered the men. A

spokesman said he thought the disputed documents had been in the public domain but that without further checks he could not be sure.

Mr Howarth said he was appalled by Lord Saville's admission: `The inquiry is behaving in an appallingly cavalier fashion'.

Mr Howarth, MP for Aldershot, continued: `Before it releases any documents, it should be absolutely sure that they are already in the public domain'.

One former soldier who has been told by his lawyer that his name may have been revealed for the first time told *The Daily Telegraph:* `I will be increasing my personal security, to put it mildly, and I will expect Lord Saville to pay for it.'

When Lord Widgery investigated Bloody Sunday almost all the 40 soldiers who gave evidence, including 28 who fired live rounds, were allowed to do so anonymously.

In a statement last might, Lord Saville's office said that the documents that had been released last autumn were all marked `ED' and that, as a result of research in the Public Record Office and in Kew, it was concluded that `ED' stood for `exhibited document'.

The disputed documents contained five reports from named Army officers to HQ Northern Ireland. Three of those officers were named when they gave evidence to Widgery, but two of the other officers who wrote reports, and three other soldiers named in the reports, have not been publicly identified as participants in Bloody Sunday.

A spokesman for Lord Saville said that it had been assumed that these names were nevertheless in the public domain in the sense of being available in the Public Records Office. Further investigations will be carried out to find out whether this is in fact the case."

The plaintiffs claim that this article was defamatory of them. It is alleged that in their ordinary meaning the words of the article meant and were understood to mean that :-

"(a) the plaintiffs were lacking [in] the professional and ethical standards required of and expected of a solicitor;

(b) the plaintiffs were unfit to practise as solicitors;

(c) the plaintiffs were party to and/or links in the murderous IRA campaign of intimidation and terror;

(d) the plaintiffs acted or would act as couriers for the IRA;

(e) the plaintiffs would disclose to the IRA information obtained by [them] while working on information gained from the [Bloody Sunday] Inquiry;

(f) the plaintiffs would render assistance to the IRA in the murder of or threats to the lives of former or serving military personnel present on Bloody Sunday;

(g) the plaintiffs carried on [their] legal practice and office[s] as solicitor[s] to assist the IRA;

(h) the plaintiffs, in the course of carrying on [their] professional practice[s] as solicitor[s] would knowingly and consciously subjugate the lives, safety and legal rights of potential witnesses to the Inquiry to the interests of the IRA;

(i) the plaintiffs [were] the sort of individual[s] who might be suspected to have been guilty of the kind of criminal behaviour complained of;

(j) the plaintiffs [were] part of the IRA, being either member[s] of that illegal terrorist conspiracy or in the alternative [were] a willing and knowing conduit of information to it;

(k) the plaintiffs were indistinguishable from IRA."

Three articles were published on 11 June 1999. They appeared on pages 1, 8 and 29 of that issue of the newspaper. These are the articles, in the order that they appeared :-

"**Guard for Bloody Sunday soldiers**
By Andrew Sparrow Political Correspondent

Protection will be offered to the five former soldiers involved in Bloody Sunday who are protesting that they have lost their anonymity, George Robertson said yesterday. The Defence Secretary promised as a matter of urgency to help the man whose names have been passed on the relatives of the Bloody Sunday victims as a result of an apparent blunder by Lord Saville's inquiry.

The offer came as one of the five claimed that the IRA had probably traced them already. `We will be under surveillance now' he told *The Daily Telegraph.*

The Bloody Sunday inquiry insists that the five names have been probably in the public domain since 1972 but a spokesman

admitted that it would take some weeks before it would be able to say for sure that it had not made a mistake.

However, the men themselves are certain that their names were a secret until some documents were distributed by Lord Saville's inquiry last autumn.

The Ministry of Defence said it would see to `ensure the personal security' of the five men involved. A spokesman refused to give details."

And

"MoD backs High Court challenge over decision not to allow anonymity
Bloody Sunday Inquiry `will put soldiers in peril'
By Terence Shaw, Legal Correspondent

The lives of British soldiers involved in the Bloody Sunday shootings in Northern Ireland and their families would be put at risk if they were denied anonymity during the new inquiry headed by Lord Saville, the High Court was told yesterday.

Sydney Kentridge, QC, appearing for 17 soldiers who fired live rounds during the Londonderry shootings in January 1972, was asking the court to set aside a decision of the tribunal last month that the full names of the soldiers should be disclosed when they gave evidence.

The tribunal which begins its public hearing in September had dismissed the risk of revenge attacks on the soldiers and their families `far too cavalierly' said Mr Kentridge. Ian Burnett, QC, appearing for the Ministry of Defence said the new inquiry had `deliberately chosen' to expose former soldiers `to a risk of inquiry or death', a decision probably `unique in the annals of British justice'. He told the High Court that the MoD was giving its `unequivocal support' to the soldiers' challenge.

The refusal to give the man anonymity undermined their `fundamental right to life'. Mr Kentridge told Lord Justice Roch who was sitting with Mr Justice Maurice Kay and Mr Justice Hooper. He accused the tribunal of three distinguished judges of `going badly wrong' in taking its decision and of acting `so unreasonably as to require its ruling to be set aside'.

It was not a case about procedure or about balance of convenience said Mr Kentridge. It was `a case about human life a the potential danger of the life of each soldier and the life of his family members'. It was the second time that soldiers expected to give

evidence to the tribunal had challenged decisions of the tribunal on the degree of anonymity they should be allowed.

Mr Kentridge and the inquiry had accepted that the soldiers' fear for their lives were genuine when it decided last December to allow them a limited form of protection in that only their surnames, but not the forenames, addresses or current occupations would be disclosed.

Four of the soldiers who feared that even disclosure of their surnames would place them in danger of reprisal successfully challenged that decision in the High Court last March, when 3 more judges, later backed up by three more judges in the Court of Appeal. Ordered the tribunal to reconsider its decision. After further hearings the tribunals replaced its decision giving the soldiers a limited degree of liability with a ruling last month that their full names should be disclosed unless individual soldiers could show `special reasons' for anonymity.

In arguing that this ruling was so unreasonable that it should be set aside, Mr Kentridge said the tribunal in its earlier decision had accepted that the soldiers has not merely a genuine but a reasonable fear that they might be open to reprisals.

It has also held that anonymity for the soldiers would not prejudice the fundamental objective of the inquiry, which was to find out the truth about Bloody Sunday.

In its second ruling on anonymity, the tribunal had decided that the `search for truth' as to what happened had to be both `thorough and open' and that the factor outweighed any potential danger to life, said Mr Kentridge.

`It will be our submission that in this second decision this factor of risk was dismissed far too cavalierly.'

At the start of yesterday's hearing Michael Mansfield, QC, representing three families of Bloody Sunday victims, condemned what he called and `insidious and sustained' newspapers campaign to protect the soldiers.

He said the campaign could amount to a contempt of court because its aim was to `impede the stream of justice'.

Mr Mansfield handed the judges newspaper cuttings that he claimed showed that both The Daily Mail and The Daily Telegraph had been involved in a sustained campaign."

And

“Saville team attacked over names

By Andrew Sparrow, Political Correspondent

The competence of the Bloody Sunday inquiry was questioned yesterday after it was announced that protection would be offered to the five former soldiers who say they have lost their anonymity.

George Robertson, the Defence Secretary, promised to help the men whose names have been passed to relatives of the Bloody Sunday victims as a result of an apparent blunder by Lord Saville’s inquiry.

The offer came as one of the five claimed that the IRA had probably traced them already and were watching them.

The inquiry insists that the five names have probably been in the public domain since 1972 but a spokesman admitted that it would take weeks before it would be able to say for sure it had not made a mistake. However, the men are certain that their names were secret until documents were distributed by Lord Saville’s inquiry to solicitors of the victims’ families last autumn.

One of the men said: `This is just sheer incompetence. No one is saying they did this deliberately. It was just that they failed to realise the significance of including such personal details. We know the five names are with the families and that means they are with the IRA.’

In a statement following a complaint from Gerald Howarth, a Tory MP, the inquiry said that when the documents were released last year `it was not doubted they had been in the public domain since 1972’.

On Tuesday night the inquiry also denied releasing the names of soldiers that day, even though that had never been the key complaint against it, Andrew McKay, the shadow Northern Ireland Secretary, said it was `an attempt to give misleading information’, showing that the inquiry was not being run properly.”

"The Saville Club

On Wednesday afternoon, the Saville Inquiry into Bloody Sunday issued a statement. This denied that soldiers' names, ranks or numbers had that day been disclosed by the inquiry to solicitors acting for the relatives of those killed. However, it conceded that such information, relating to five officers in particular, was released to `interested parties' solicitors' last autumn. At that time, it `was not doubted' that the names, ranks and numbers of the five soldiers concerned had `been in the public domain since 1972'.

It would have been scandalous enough had the inquiry been uncertain whether it had made public, some six months ago, the names of five men whom Sinn Fein/IRA wants to kill. But yesterday, it seemed to concede that this has probably been done. Certainly, George Robertson, the Defence Secretary, rushed in to promise extra security for the five men, whose lives Lord Saville's inquiry, set up with the blessing of Tony Blair, has put at risk.

We need some answers from Lord Saville, and we need them now. Why the disingenuous insistence that names had not been released `today'? When did those acting for the inquiry discover that names had been released last autumn? When did Lord Saville himself find out? Why is the inquiry claiming that it will take `some weeks' to confirm that names have not been released before? If the appeal of these soldiers, and others, for anonymity succeeds, could not the release of names place the inquiry in contempt of court? When will Lord Saville deign to address the public about all this?

Its New Labour, new judges. First, we had Lord Hoffmann, who somehow forgot to tell his fellow Law Lords that he had an interest in the Pinochet Case. Then we had Sir William Macpherson, who published the names of Lawrence inquiry witnesses, thereby putting their safety at risk. Now we have Lord Saville, who is seemingly taking up where Sir William left off.

Sir William got away with it Lord Saville should not. The lives of British soldiers are in peril. By now, Sinn Fein/IRA known the names of at least five of them. How can a blunder that cost lives be examined by a man who is risking more? The disdainful complacency of Lord Saville is matched only by a government that praises soldiers when they are serving in Kosovo, but abandons them after they have served in Ulster."

The plaintiffs claim that these three articles are also defamatory of them in the same respects as the first article. All three statements of claim contained claims for aggravated damages and interest.

The defendant issued a summons on 12 November 1999 seeking :-

(i) An order under Order 82 rule 3A determining whether the words complained of were capable of bearing the meanings attributed to them in the statement of claim and an order striking out those meanings which the words were not capable of bearing or, alternatively, dismissing the plaintiffs' claims.

(ii) An order under Order 18 rule 19(1)(a), (b), (c) and/or (d) and/or the inherent jurisdiction of the court, striking out the plaintiffs' claim for aggravated damages because of the plaintiffs' failure to provide proper particulars as required by Order 82 rule 3(6) and striking out the claim for interest since this was only recoverable on financial loss and none had been pleaded by the plaintiffs.

On 3 December 1999 the plaintiffs served amended statements of claim in which particulars of conduct aggravating damages were pleaded.

(ii) to the claim made by Mr and Mrs McLaughlin

Mitchel McLaughlin is the chairman of the political party, Sinn Fein. By proceedings issued on 3 February 1999 he and his wife, Mary Lou McLaughlin, claim damages for libel alleged to be contained in an article of which Jeanette Oldham was the author and Century Newspapers the publisher. The article appeared in the 20 January 1999 edition of the News Letter. The text of the article is as follows :-

"Sinn Fein chief hits at love life -gossips"

> Sinn Fein chairman Mitchel McLaughlin yesterday claimed he is the victim of a malicious smear campaign being waged by enemy forces in a bid to shame top republicans.
>
> The Foyle Assembly member - who recently shaved his moustache for a younger look -blasted rumours that he has decommissioned his wife Mary-Lou for a woman half his age.
>
> Mitchel said that he believed certain people were waging a wicked whispering campaign, spreading blatant lies about the sex and love lives of leading Sinn Fein politicians.

> `I absolutely, categorically deny that I have ever had an affair', he said. `It is absolute rubbish. But the rumours do not surprise me.'
>
> `I have heard the exact same rumour about other Sinn Fein members with impeccable reputations'."

And Sinn Fein spokesman Dominic Doherty backed the chairman's beliefs.

> `It seems there are some people spreading rumours about a number of top Sinn Fein people. The same stories about members leaving their wives and running off with other people's wives have been doing the rounds for a couple of weeks.
>
> I have no idea who is behind them'.

Revelations about the attempted slurs come just days after FAIT development officer Vincent McKenna told how he was the victim of an equally damaging smear campaign by republicans.

The high-profile peace campaigner was arrested in Monaghan last Thursday, quizzed by detectives over alleged sex offences and released without charge, although Gardai confirmed investigations were ongoing.

But the one-time IRA member claims Provo sources fed detectives a pack of lies about him so that they would arrest him, and the matter could be leaked to the press.

`There's been a smear campaign going on against me for some time', he added.

Meanwhile the News Letter has learned the IRA's punishment squad commander in Antrim has stirred up a storm among fellow terrorists after allegedly running off with a top IRA prisoner's wife seven months ago.

He was ordered to return to the town under sentence of death - stealing an IRA man's wife is apparently an 'executionable offence' - and to go back to his wife.

Last night an IRA source told the News Letter the man obeyed orders, but has drawn up a list of 20 IRA men he intends to have shot or beaten amid claims that they `gossiped' about the affair.

The IRA is very strict about affairs with other members' wives. You just don't do it. But this man is off his head and wants to get

back at the people he reckons told people in the town who he was having an affair with."

Mr McLaughlin claims that this article was defamatory of him. He alleges that, in their natural and ordinary meaning the words of the article meant, or in the alternative, by innuendo meant and were understood and were intended to mean that :-

"(1) [he] had betrayed his wife and family;

(2) [he] had treated his wife in a callous and selfish manner;

(3) [he] was an adulterer;

(4) [he] had humiliated his wife;

(5) [he] had been disloyal and broken his marriage vows;

(6) [he] he was unfit to be a husband or father;

(7) [he] was deceitful;

(8) [he] was dishonest;

(9) [he] was hypocritical."

Mrs McLaughlin also claims that the article is defamatory of her. She alleges that the words of the article, in their ordinary and natural meaning meant or, by innuendo, meant or were intended to and were understood to mean that :-

"(1) she was an unattractive person;

(2) she was unable to maintain the affection of her husband;

(3) she was incapable of holding the marriage together;

(4) she was unable to maintain her husband's interest;

(5) she was such a person that her husband was unfaithful;

(6) she was an object of pity and derision;

(7) she was a bad wife;

(8) theirs was an adulterous family with poor parents."

Both Mr and Mrs McLaughlin claimed aggravated and exemplary damages and interest.

The defendants have applied for orders similar to those sought in the actions in which Mr McCartney, Mr MacDermott and Mr Doherty are plaintiffs and for an order pursuant to Order 82 rule 3(1) striking out the plaintiffs' claim in respect of alleged innuendo meanings on the ground of the plaintiffs' failure to give particulars of the facts and matters relied on in support of the those meanings.

The plaintiffs have intimated an intention to amend their statements of claim by adding the following paragraphs relating to their claims for aggravated and exemplary damages :-

(a) in the case of Mr McLaughlin

> "(i) The defendants failed to make any or any adequate enquiries as to the reliability of their information
>
> (ii) The defendants had the motive of damaging the plaintiff politically and his role in the peace process
>
> (iii) The defendants were actuated by pride and ill-will towards the plaintiff
>
> (iv) The defendants were aware that this publication would hurt and damage the plaintiff's children
>
> (v) The plaintiff's ability to operate effectively as a public figure promoting the peace process has been damaged
>
> (vi) The defendants failed to apologise and are defending the action."

(b) in the case of Mrs McLaughlin

> "(i) The defendants failed to make any or any adequate enquiries as to the reliability of their information
>
> (ii) The defendants were actuated by pride and ill-will towards the plaintiff's husband
>
> (iii) The defendants were aware that this publication would hurt and damage the plaintiff's children
>
> (iv) The defendants failed to apologise and are defending the action."

Order 82 rule 3A

This rule (so far as is material to these applications) provides :-

> "(1) At any time after the service of the statement of claim either party may apply to a judge in chambers for an order determining whether or not the words complained of are capable of bearing a particular meaning or meanings attributed to them in the pleadings.
>
> (2) If it appears to the judge on the hearing of an application under paragraph (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the pleadings, he may dismiss the claim or make such other order or give such judgment in the proceedings as may be just."

The English rule, which is in identical terms, was considered by the Court of Appeal in England in the case of *Skuse v Granada Television Ltd* [1996] EMLR 278. Sir Thomas Bingham MR set out the following principles for the application of the rule :-

> "(1) The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable viewer watching the programme once. [The case involved a television programme.]
>
> (2) The hypothetical reasonable reader (or viewer) is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking. But he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.
>
> (3) While limiting its attention to what the defendant has actually said or written this court should be careful of an over-elaborate analysis of the material in issue.
>
> (4) A television audience would not give the programme the analytical attention of a lawyer to the meaning of a document, an auditor to the interpretation of accounts, or an academic to the content of a learned article.
>
> (5) In deciding what impression the material complained of would have been likely to have on the hypothetical reasonable

> viewer the court are entitled (if not bound) to have regard to the impression it made on them.
>
> (6) The court should not be too literal in its approach.
>
> (7) A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally, or be likely to affect a person adversely in the estimation of reasonable people generally."

These principles were adopted by the Court of Appeal in this jurisdiction in the case of *Neeson and Richardson v Belfast Telegraph Newspapers Ltd* [1999] NIJB 200.

It is clear that, in applying Order 82 rule 3A, the court must be careful not to pre-empt the function of the jury. While, as Sir Thomas Bingham said, there will inevitably be an element in the court's deliberations of the impression the words have made on the judge himself, that must be for the purpose of deciding what are the *potential* meanings of the words rather than concluding which meanings he would attribute to them. Over elaborate or zealous parsing of the words is not appropriate to the exercise that the judge must perform at this interlocutory stage. The impression created by the words rather than a close textual analysis of their import should be the touchstone for the application of this provision.

The solicitors' case

The first issue to be addressed is whether the articles are capable of bearing meanings defamatory of the plaintiffs. For the defendant, Mr Gerald Simpson QC submitted that none of the words could be considered defamatory of the plaintiffs. He pointed out that the articles did not suggest that when the documents containing the names of soldiers were released there was thereafter any restriction on their use. Even if the articles could be construed as meaning that the solicitors had passed the material on to their clients, it was not suggested that there was anything untoward about that. There was nothing in the articles, he claimed, to warrant the view that the solicitors had passed the material to the IRA. The burden of the criticism was of the Inquiry

team, and, possibly of the families of the victims. Nothing in the articles imputed to the solicitors responsibility for the release of the information to republican terrorists.

I do not accept these submissions. I acknowledge that there is scope for debate as to the meaning of the articles and I am not to be taken as having concluded that they can only be construed as meaning that the solicitors had indeed passed this information to the IRA, but I am satisfied that the articles are capable of bearing that construction. In keeping with the injunction given by the Lord Chief Justice in the *Neeson* case that one should not say more than is strictly necessary since the actual meaning to be attributed to the words complained of is a matter for the jury, I refrain from further comment on this issue.

I turn then to the defendant's claim that the words complained of are not capable of bearing the meanings attributed to them in the statement of claim. For the plaintiffs, Mr Michael Lavery QC accepted that there was an element of repetition in the meanings pleaded. He acknowledged that there was duplication between paragraphs (a) and (b), between paragraphs (c) and (d) and between paragraphs (c) and (e). He also accepted that paragraph (g) was encompassed in paragraph (a) and that paragraphs (j) and (h) are covered by paragraph (f).
In light of these sensible concessions, I begin by striking out paragraphs (b), (g), (h) and (j). Since Mr Lavery had conceded that paragraph (e) was also duplicated by paragraph (c), an option would be to strike out paragraph (e). I do not consider, however, that the words complained of are capable of bearing the meaning attributed to them in paragraphs (c) or (d), however. On that quite separate ground, therefore, I strike out those paragraphs.

Since I have concluded that the articles are capable of bearing the meaning that the plaintiffs passed information about the identity of the soldiers to republican terrorists, I decline to strike out paragraphs (a) and (e). Clearly, a possible consequence of the relay of such information is that the lives of those whose identities had been revealed would be put at risk and

I therefore refuse to strike out paragraph (f). I do not consider, however, that the words are capable of being understood to mean - or even imply - that the plaintiffs carried on their legal practice and office as solicitors to assist the IRA or that they were indistinguishable from the IRA. I therefore strike out paragraphs (g) and (k). I decline to strike out paragraph (i). The surviving paragraphs are, therefore, (a), (e), (f) and (i).

In light of the amendment to the statement of claim in relation to aggravated damages, I refuse to strike out that claim. On the matter of interest, the defendant relied on the commentary in Gatley on Libel and Slander 9th Edition paragraph 26.36 :-

> "**Interest.** Since damages for non-pecuniary loss are awarded to compensate a plaintiff up until and including the trial, a claim for interest is only appropriate where the plaintiff is claiming damages for financial loss."

Section 33A of the Judicature (Northern Ireland) Act 1978 provides :-

> "(1) Subject to rules of court, in proceedings (whenever instituted) before the High Court for the recovery of a debt or damages there may be included in any sum for which judgment is given simple interest, at such rate as the court thinks fit or as rules of court may provide, on all or any part of the debt or damages in respect of which judgment is given, or payment is made before judgment, for all or any part of the period between the date when the cause of action arose and -
>
> (i) in the case of any sum paid before judgment, the date of the payment; and
>
> (ii) in the case of the sum for which judgment is given, the date of the judgment."

Valentine: Civil Proceedings, The Supreme Court at paragraph 14.78 states that "debt or damages means any monetary award payable in tort, contract, common law or equity …". I consider that the matter is not free from controversy, therefore, and I do not believe that it is suitable for the draconian remedy of striking out. I refuse the application in relation to the interest claim, therefore.

The McLaughlin actions

The defendants' principal submission in relation to Mrs McLauglin's claim was that an article which suggests only that a man has left his wife for a younger woman is not capable of being defamatory of her. It was contended by Mr Simpson for the defendants that nothing in the article would tend to lower Mrs McLaughlin in the estimation of right thinking members of society. For the plaintiff, Mr Lavery relied on the well known definition of defamatory statement given by Scrutton LJ in *Youssoupoff v Metro-Goldwyn Mayer* [1934] 50 TLR 581, 584 "a false statement about a man to his discredit". He suggested that the false claim that Mrs McLaughlin had been deserted by her husband for a woman half his age was certainly to her discredit in that it clearly implied that she was unable to retain his affection and loyalty in the face of competing youthful charms.

While, in general, there is much force in the suggestion that an article that a man has left his wife for a younger woman does not, of and by itself, reflect badly on the deserted wife, I am not able to say that such a suggestion is *incapable* of being defamatory. My task at this stage is to determine whether a meaning defamatory of the plaintiff is capable of being drawn from the article; it is not for me to decide if that is the meaning which should or must be drawn from it. I consider that a construction could be placed on the article which would tend to reduce the plaintiff in the minds of right thinking members of society. It is for the jury to decide whether such a construction should be placed upon it.

No particulars of the facts and matters relied upon to support the innuendo plea had been included in the statement of claim of either plaintiff. Mr Lavery indicated that he did not propose to pursue the innuendo claim and I will therefore accede to the defendants' application to have the reference to the innuendo deleted from the statement of claim of each plaintiff.

In relation to the meanings pleaded in Mrs McLaughlin's statement of claim, Mr Simpson submitted that the words of the article complained of were not capable of bearing the meanings attributed to them in any of the sub-paragraphs of paragraph 5. I consider that the article is capable of bearing the meanings set out in sub-paragraphs (1) to (4). I do not consider that it is capable of bearing the meanings contained in sub-paragraphs (5) to (8), however. There is nothing in the article which suggests that Mrs McLaughlin was a person of a particular type; there is nothing to suggest that she had been pitied or derided or that she was a bad wife or that the family was adulterous. The only accusation of adultery had been made against her husband, not at any other member of the family. I will strike out sub-paragraphs (5) to (8), therefore.

In relation to Mr McLaughlin's claim, Mr Simpson suggested that the words complained of were not capable of bearing the meanings contended for in sub-paragraphs (2), (4), (6), (7), (8) and (9) of paragraph 5 of his statement of claim. I agree that nothing in the article could reasonably be construed as suggesting that he was unfit to be a husband or father or that he was deceitful, dishonest or hypocritical. I will accede to the defendants' application in relation to sub-paragraphs (6) to (9), therefore. I am not satisfied that the words of the article are incapable of bearing the meanings attributed to them in sub-paragraphs (2) and (4), however, and I refuse the application in relation to those sub-paragraphs. Sub-paragraphs (1), (2), (3), (4) and (5) will be allowed to remain, therefore.

For the reasons given in the case of the solicitors' claim, I refuse the defendants' application in relation to the claims for aggravated and exemplary damages and interest.

Order 22

The defendants have applied for leave to be permitted to make a payment into court in each of the cases. The arguments in relation to this were not developed in the hearing before me, however, and it appears to me, in any event, that the parties will wish to consider the effect of

this judgment before presenting submissions on this topic. If, having considered the judgment, the defendants wish to pursue this application, I will have the matter listed for further argument on this point.

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

DESMOND J DOHERTY, GREGORY McCARTNEY and PADRAIG MacDERMOTT

Plaintiffs

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Defendant

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