Derbyshire County Council v Times Newspapers Ltd

Derbyshire County Council v Times Newspapers Ltd and Others
[1993] AC 534, [1993] 1 All ER 1011, [1993] 2 WLR 449, 91 LGR 179
House of Lords

Lord Keith of Kinkel, Lord Griffiths, Lord Goff of Chieveley, Lord Browne-Wilkinson and Lord Woolf

Defamation - Parties - Corporation - Publication relating to administration of local authority's superannuation fund - Publication insinuating maladministration of pension funds - Balance between public interest in freedom of speech and protection of authority's reputation –

Whether local authority entitled to maintain action in defamation

The plaintiff, a local authority, brought an action for damages for libel against the defendants in respect of two newspaper articles which had questioned the propriety of investments made for its superannuation fund. On a preliminary issue as to whether the plaintiff had a cause of action against the defendants, the judge held that a local authority could sue for libel in respect of its governmental and administrative functions, and dismissed the defendants' application to strike out the statement of claim. On appeal by the defendants, the Court of Appeal held that the plaintiff could not bring the action for libel.

On appeal by the plaintiff:-

Held, dismissing the appeal, that since it was of the highest public importance that a democratically elected governmental body should be open to uninhibited public criticism, and since the threat of civil actions for defamation would place an undesirable fetter on the freedom to express such criticism, it would be contrary to the public interest for institutions of central or local government to have any right at common law to maintain an action for damages for defamation; and that, accordingly, the plaintiff was not entitled to bring an action for libel against the defendants, and its statement of claim would be struck out (post, pp. 547E-F, 549B, 550D, 551H-552E).

Manchester Corporation v Williams [1891] 1 QB 94, D.C. considered.
Bognor Regis Urban District Council v Campion [1972] 2 QB 169 overruled.
Decision of the Court of Appeal [1992] QB 770; [1992] 3 WLR 28; [1992] 3 All ER 65 affirmed on different grounds.

APPEAL from the Court of Appeal.

This was an appeal, by leave of the Court of Appeal, by the plaintiff, Derbyshire County Council, from the decision of the Court of Appeal (Balcombe, Ralph Gibson and Butler-Sloss L.JJ.) [1992] QB 770 allowing an appeal by the defendants, Times Newspapers Ltd, Andrew Neil, the editor of "The Sunday Times," and Rosemary Collins and Peter Hounam, two of the newspaper's journalists, from the order of Morland J. [1992] QB 770 holding, on a preliminary issue, that the plaintiff could maintain a cause of action in libel against the defendants in respect of articles in issues of "The Sunday Times" dated 17 and 24 September 1989.

The facts are stated in the opinion of Lord Keith of Kinkel.

Charles Gray Q.C. and Heather Rogers for the plaintiff. In exercising its powers and carrying out its functions as a county council, the plaintiff has a reputation that is distinct from that of its individual members or officers. At common law trading corporations can sue for libel: Metropolitan Saloon Ombibus Co Ltd v Hawkins (1859) 4 H. N. 87. It is not necessary for the corporation to prove actual damage: South Hetton Coal Co Ltd v North-Eastern News Association Ltd [1894] 1 QB 133. Non-trading corporations can also sue: National Union of General and Municipal Workers v Gillian [1946] KB 81. So, too, can trade unions: Electrical, Electronic, Telecommunication and Plumbing Union v Times Newspapers Ltd [1980] QB 585. Each of these bodies, although having only legal personality, has a legitimate entitlement to protect its reputation from defamatory attacks. Further, a partnership (which does not have a separate legal personality) is entitled to sue in its own name for damage done to its reputation: Le Fanu v Malcolmson (1848) 1 H.L.Cas. 637. There is no reason in logic or principle to distinguish the plaintiff from these bodies.

Bognor Regis Urban District Council v Campion [1972] 2 QB 169 remains good authority for the proposition that a local authority has a "governing" reputation, which it can protect by an action for libel. [Reference was also made to City of Prince George v British Columbia Television System Ltd (1978) 85 D.L.R. (3d) 755; (1979) 95 D.L.R. (3d) 577; Church of Scientology Inc. v Anderson [1980] W.A.R. 71; Die Spoorbond v South African Railways, 1946 A.D. 999 and Argus Printing and Publishing Co Ltd v Inkatha Freedom Party, 1992 (3) S.A. 579.] The Court of Appeal erred in holding that Manchester Corporation v Williams [1891] 1 QB 94; 63 L.T. 805 conflicts with the Bognor decision and casts doubt on the general principle that a local authority is entitled to sue for libel. That case only decided that a local authority could not sue for libel in respect of an imputation of bribery and corruption. The basis of the decision was the wrong conclusion that a local authority cannot commit those offences. The common law is thus clear and certain.

There is no statutory restriction preventing the plaintiff from taking action for libel. On the contrary, section 222 of the Local Government Act 1972 confers a wide power on local authorities to institute civil proceedings of all types. The need for a local authority to be able to sue for libel to protect its reputation is a real and pressing one. Damage to its reputation may make it more difficult for the authority to borrow money or tender for contracts, and may disaffect its staff or deter participation in its pension scheme. The rationale for permitting persons other than individuals to sue for libel thus applies with equal force to local authorities.

Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953) (Cmd. 8969) should not be used to determine what the common law is, or to resolve any uncertainty in the common law; in fact, however, English domestic law is consistent with article 10. It is accepted that the precepts underlying the Convention may be looked at to decide whether the public interest in freedom of information should prevail over the right to protect one's reputation. [Reference was made to Reg. v Secretary of State for the Home Department, Ex parte Brind [1991] 1 AC 696, 760.] But regard should be had to the fact that the right to freedom of expression under the Convention is not unlimited. It is subject to restrictions which are prescribed by law, or necessary in a democratic society, or necessary for the protection of the reputation or rights of others. [Reference was made to Attorney-General v Antigua Times Ltd [1976] AC 16, 25-28.] Any restriction should be proportionate to its aim.

The article should not be applied in the abstract to conclude that a local authority's right to bring a libel action will inevitably and in all circumstances infringe the article. The correct approach should be to consider whether in the context of the particular case, the relevant domestic law is unnecessarily restrictive: see Castells v Spain (1992) 14 E.H.R.R. 445; Lingens v Austria (1986) 8 E.H.R.R. 407 and Oberschlick v Austria, 23 May 1991, Publications of the European Court of Human Rights, Series A No. 204. Even if the question were to be asked in the abstract, a thorough investigation of the aims and effect of domestic law would show that the English law of defamation strikes a balance between the rights of protection for reputation and of freedom of expression. Thus, a local authority has to show that a defamatory article in a newspaper refers to it as such, not just to individuals associated with it. The newspaper only has to prove the "sting" of the libel, not every single allegation. The defence of fair comment gives a wide protection to the newspaper. Honest comment (including inferences of fact) cannot be the subject of a successful libel action: Silkin v Beaverbrook Newspapers Ltd [1958] 1 WLR 743 and Telnikoff v Matusevitch [1992] 2 AC 343. Damages awarded to corporate plaintiffs are not large. A local authority has no feelings to be hurt by a libel: see Fielding v Variety Incorporated [1967] 2 QB 841. Thus, the English law of defamation imposes no unnecessary or illegitimate restriction on freedom of expression within article 10.

A local authority should not be deprived of the right to bring an action for libel because of the possibility of its being able to prosecute for criminal libel. This offence is virtually extinct and is anomalous and difficult to reconcile with article 10: see Reg. v Wells Street Stipendiary Magistrate, Ex parte Deakin [1980] AC 477. Nor should the right be denied because of the availability of actions for malicious falsehood. If there is a legitimate need for a local authority to protect its reputation, why should its ability to do so depend on whether, fortuitously, it could prove malice. A non-malicious publication may cause just as much damage as a malicious one.

If a local authority has a right to sue for libel at common law, only Parliament, not the courts, can take away that right: see Dennis v United States of America (1951) 341 U.S. 494.

Anthony Lester Q.C. and Desmond Browne Q.C. for the defendants. The plaintiffs are not a trading corporation or some other private body: they are a governmental body performing public duties and exercising public powers not possessed by individual citizens or private bodies. There is no justification for treating a local authority's governing reputation as analogous to a private company's or trade union's business reputation, and there is no legitimate public interest in restricting or interfering with freedom of speech to protect that governing reputation. For the courts to allow an elected public authority to sue for libel would be to authorise unnecessary interference by the common law with freedom of expression in a democratic society. It is important that there should be as much public information and public criticism about the workings of local government as there is about the workings of central government. If the council were to succeed in this appeal, any governmental body with corporate status could bring libel proceedings against a newspaper or individual citizen alleged to have defamed its governing reputation. Such bodies would be able to wield the very sharp sword of libel proceedings to deter or suppress public criticism and information about what they do as the people's representatives and public servants. They could do so using public funds and knowing that an ordinary individual citizen could not afford access to justice to defend his freedom of political expression against such a claim. This is not a hypothetical matter: the defendant in the Bognor Regis case [1972] 2 QB 169 was completely ruined by the legal costs of defending a libel trial for having handed out a leaflet at a ratepayers'

association meeting in a village hall. Freedom of expression is an essential feature of citizenship and of representative democracy. Close scrutiny of possible threats to fundamental freedoms is called for: Reg. v Independent Television Commission, Ex parte T.S.W. (Broadcasting) Ltd, The Times, 30 March 1992.

The plaintiffs seek to extend the tort of libel well beyond the ambit of the criminal offence of seditious libel, which is designed to protect the government and the public against scurrilous and extreme attacks upon the Crown or government institutions: see Reg v Chief Metropolitan Stipendiary Magistrate, Ex parte Choudhury [1991] 1 QB 529. Seditious libel requires proof of a seditious intention, whereas state of mind is immaterial for defamatory libel, since malice is implied from the mere publication of defamatory matter. The development of a tort of government libel, much more draconian than the crime of seditious libel, would have a chilling effect upon the freedom of expression of newspapers as well as of the individual citizen critic of government. The press is not above the law or entitled to some special privilege or immunity not enjoyed by the individual citizen: it has no greater or fewer rights than does the citizen for whom it is the surrogate.

In the Bognor Regis case [1972] 2 QB 169 no attempt was made to weigh the public interest in freedom of expression against the public interest in the protection of reputation. Although followed in City of Prince George v British Columbia Television System Ltd, 85 D.L.R. (3d) 755 it is uncertain whether that case remains good law in Canada in the light of the constitutional guarantee of free speech in the Charter of Rights and Freedoms: see Edmonton Journal v Attorney-General for Alberta (1989) 64 D.L.R. (4th) 577 and Retail, Wholesale Department Store Union, Local 850 v Dolphin Delivery Ltd (1986) 33 D.L.R. (4th) 174. Where there has been judicial weighing of the competing public interests, it has been held that governmental bodies cannot sue in respect of their governing reputations: City of Chicago v Tribune Co (1923) 139 N.E. 86; New York Times Co v Sullivan (1964) 376 U.S. 254 and Die Spoorbond v South African Railways, 1946 A.D. 999.

In the United Kingdom there is no Act of Parliament incorporating the guarantee of free speech contained in article 10 of the European Convention on Human Rights and Fundamental Freedoms into domestic law. However, the common law is not ethically aimless. Subject to the sovereign power of Parliament to intervene by legislation, the common law matches the protection given to free speech by article 10. The fundamental human right to free expression is an essential feature of citizenship and of representative democracy. It is a basic principle of the unwritten British Constitution, protected by the common law.

In the absence of legislative intervention by Parliament, it is the constitutional function of the courts, when declaring and applying the common law, to ensure that the law does not unnecessarily interfere with free expression: see In re Alberta Legislation [1938] 2 D.L.R. 81; Australian Capital Television Pty. Ltd v Commonwealth of Australia (No. 2) (1992) 108 A.L.R. 577; Nationwide News Pty. Ltd v Wills (1992) 108 A.L.R. 681 and Te Runanga O Wharekauri Rekohu Inc. v Attorney-General (unreported), 3 November 1992.

Where a statute confers an apparently unfettered power on a minister to restrict free expression, the common law principles of statutory interpretation require the restriction to be closely scrutinised and to be justified as necessary to protect an important competing public interest: see Reg. v Secretary of State for the Home Department, Ex parte Brind [1991] 1 AC 696. There is a similar requirement where the restriction upon free expression is imposed by the common law itself: Attorney-General v Guardian Newspapers Ltd [1987] 1 WLR 1248 and Attorney-General v Guardian Newspapers Ltd (No. 2) [1990] 1 AC 109. Furthermore, the

courts will, unless constrained by binding authority, declare the common law so as to be in harmony with the right to freedom of expression recognised and guaranteed by article 10 of the Convention and with the principle that only necessary interferences with freedom of expression are acceptable. The Convention, though not part of domestic law, enshrines the common law. The mere existence of a legal rule can violate a Convention right or freedom if it has a chilling effect upon the practical enjoyment of that right or freedom: Dudgeon v United Kingdom (1981) 4 E.H.R.R. 149 and Times Newspapers Ltd v United Kingdom (Application No. 14631/89) (unreported), 5 March 1990. [Reference was also made to Castells v Spain, 14 E.H.R.R. 445 and Hector v Attorney-General for Antigua and Barbuda [1990] 2 AC 312.] The application of the Bognor Regis decision undoubtedly interferes with free speech, authorises potential restrictions and penalties and has a serious chilling effect upon freedom of speech generally. A rule enabling a government corporation to sue for libel thus cannot be justified under article 10(2) in accordance with the principles of objective necessity and proportionality. These principles are of particular importance so far as the press is concerned as public watchdog. The limits of permissible criticism are wider with regard to the government. A critic of government conduct ought not to have to guarantee the truth of all his factual assertions endangering the esteem in which government is held on pain of a successful suit for libel. This would deter newspapers and individual citizens from offending governmental bodies and would lead to self-censoring and public ignorance about the workings of government. Placing the burden of proving justification upon the defendant does not mean that only false allegations would be deterred. In addition, would-be critics of government conduct will be deterred from voicing criticism even though what they published was reasonably believed to be true and was in fact true, because of doubt of whether it could be proved to the satisfaction of a court of law, or because of fear of the expense of having to do so: see City of Chicago v Tribune Co, 139 N.E. 86, approved in New York Times Co v Sullivan, 376 U.S. 254. [Reference was also made to Hoechst A.G. v Commission of the European Communities (Case 46/87R) [1987] E.C.R. 1549; Sixteen Austrian Communes v Austria (1974) 46 Eur.Comm.H.R.Dec. 118; Sunday Times v United Kingdom (1979) 2 E.H.R.R. 245; Sunday Times v United Kingdom (No. 2) (1991) 14 E.H.R.R. 229 and Foster v British Gas Plc. [1991] 2 AC 306.]

Even if a governmental body is entitled to sue for libel, a constitutional privilege should attach to a publication imputing maladministration to such a body. The categories of publications which enjoy privilege at common law are not closed: London Association for Protection of Trade v Greenlands Ltd [1916] 2 AC 15.

An individual councillor or local government officer can bring proceedings in his own name for an attack upon his personal reputation in relation to his official activities. It is open to question, however, whether qualified privilege attaches to the publication of fair information on a matter of public interest concerning the manner in which a public officer performs public functions: see Webb v Times Publishing Co Ltd [1960] 2 QB 535 and Blackshaw v Lord [1984] QB 1, in which the Court of Appeal took too narrow a view of the scope of privilege in such circumstances.

The plaintiffs cannot rely on section 222(1) of the Local Government Act 1972, since their proceedings are not capable of promoting or protecting the interests of the inhabitants of Derbyshire generally and they constitute an unnecessary interference with free expression.

Browne Q.C. following. The freedom to express criticism of a governmental body can be more easily stifled by a series of civil actions than by criminal prosecutions: City of Chicago v Tribune Co, 139 N.E. 86, 90. Unlike a criminal prosecution, in a civil action the plaintiff

does not need to show a prima facie case as a pre-condition to going for trial. The mere issue of a writ tends to have a gagging effect; and once proceedings are set down for trial, they become active so that further publications are caught by the strict liability rule: section 2(3) of, and Schedule 1 to, the Contempt of Court Act 1981. A civil court can grant prior restraint of publication, and damages are potentially without limit. There is no legal aid and proceedings are notoriously costly. The plaintiff does not have to prove his claim beyond reasonable doubt. [Reference was made to Cox v Feeny (1863) 4 F. F. 13.]

Gray Q.C. in reply. If there is a need for greater protection to be given to freedom of expression, the manner of achieving that ought not to be an arbitrary removal from certain plaintiffs of their rights, but should be by extension of existing common law defences. The route to reform should be through the law of privilege.

Their Lordships took time for consideration.

18 February 1993. Lord Keith of Kinkel: My Lords, this appeal raises, as a preliminary issue in an action of damages for libel, the question whether a local authority is entitled to maintain an action in libel for words which reflect on it in its governmental and administrative functions. That is the way the preliminary point of law was expressed in the order of the master, but it has opened out into an investigation of whether a local authority can sue for libel at all.

Balcombe LJ, giving the leading judgement in the Court of Appeal, summarised the facts thus [1992] QB 770, 802:

"The facts in the case are fortunately refreshingly simple. In two issues of 'The Sunday Times' newspaper on 17 and 24 September 1989 there appeared articles concerning share deals involving the superannuation fund of the Derbyshire County Council. The articles in the issue of 17 September were headed 'Revealed: Socialist tycoon's deals with a Labour chief' and 'Bizarre deals of a council leader and the media tycoon:' that in the issue of 24 September was headed 'Council share deals under scrutiny.' The council leader was Mr David Melvyn Bookbinder; the 'media tycoon' was Mr Owen Oyston. It is unnecessary for the purposes of this judgement to set out in any detail the contents of these articles: it is sufficient to say that they question the propriety of certain investments made by the council of moneys in its superannuation fund, with Mr Bookbinder as the prime mover, in three deals with Mr Oyston or companies controlled by him. Excerpts from the articles giving the flavour of the allegations made will be found in the judgement at first instance... to which those interested may refer. The council is the 'administering authority' of its superannuation fund under the Superannuation Act 1972 and the Local Government Superannuation Regulations 1986 (SI 1986 No 24) made thereunder."

Following the publication actions of damages for libel were brought against the publishers of "The Sunday Times," its editor and the two journalists who wrote the articles, by Derbyshire County Council, Mr Bookbinder and Mr Oyston. Mr Oyston's action was settled by an apology and payment of damages and costs. The statements of claims in this action by the plaintiff and in that by Mr Bookbinder are for all practical purposes in identical terms. That of the plaintiff asserts in paragraph 6 that there were written and published "of and concerning the council and of and concerning the council in the way of its discharge of its responsibility for the investment and control of the superannuation fund" the words contained in the article

of 17 September, and paragraph 8 makes a similar assertion in relation to the article of 24 September. Paragraph 9 states:

"By reason of the words published on 17 September 1989 and the words and graph published on 24 September 1989 the plaintiff council has been injured in its credit and reputation and has been brought into public scandal, odium and contempt, and has suffered loss and damage."

No special damage is pleaded. On 31 July 1991 French J refused an application by the plaintiff to amend the statement of claim so as to plead a certain specific item of special damage.

The preliminary point of law was tried at first instance before Morland J [1992] QB 770 who on 15 March 1991 decided it in favour of the plaintiff. However, on appeal by the defendants his judgement was reversed by the Court of Appeal (Balcombe, Ralph Gibson and Butler-Sloss LJJ) [1992] QB 770, on 19 February 1992. The plaintiff now appeals, with leave given in the Court of Appeal, to your Lordships' House.

There are only two reported cases in which an English local authority has sued for libel. The first is Manchester Corporation v Williams [1891] 1 QB 94, 63 LT 805. The defendant had written a letter to a newspaper alleging that "in the case of two, if not three, departments of our Manchester City Council, bribery and corruption have existed, and done their nefarious work." A Divisional Court consisting of Day J and Lawrance J held that the statement of claim disclosed no cause of action. The judgement of Day J in the Queen's Bench report is in these terms [1891] 1 QB 94, 96:

"This is an action brought by a municipal corporation to recover damages for what is alleged to be a libel on the corporation itself, as distinguished from its individual members or officials. The libel complained of consists of a charge of bribery and corruption. The question is whether such an action will lie. I think it will not. It is altogether unprecedented, and there is no principle on which it could be founded. The limits of a corporation's right of action for libel are those suggested by Pollock CB in the case which has been referred to. A corporation may sue for a libel affecting property, not for one merely affecting personal reputation. The present case falls within the latter class. There must, therefore, be judgement for the defendant."

Lawrance J said that he was of the same opinion.

The Law Times report contains a somewhat longer judgement of Day J in these terms, 63 LT 805, 806-807:

"This action is brought by the mayor, aldermen, and citizens of the city of Manchester to recover damages from the defendant in respect of that which is alleged by them to be a libel on the corporation. The alleged libel is contained in a letter written by the defendant to the editor of the 'Manchester Examiner and Times,' which charged, as alleged by the statement of claim, that bribery and corruption existed or had existed in three departments of the Manchester City Council, and that the plaintiffs were either parties thereto or culpably ignorant thereof, and that the said bribery and corruption prevailed to such an extent as to render necessary an inquiry by a parliamentary commission. Now it is for us to determine whether a corporation can bring such an action, and I must say that, to my mind, to allow such a thing would be wholly unprecedented and contrary to principle. A corporation may sue for a

libel affecting property, not for one merely affecting personal reputation. This does not fall within the class of cases in respect of which a corporation can maintain an action, but does fall within the second class commented on by Pollock CB in his judgement in the case of the Metropolitan Saloon Omnibus Co Ltd v Hawkins, 4 H & N 87, with which I fully agree... [a quotation follows] The charge in the present case is one of bribery and corruption, of which a corporation cannot possibly be guilty, and therefore, in my opinion, this action will not lie."

It is likely that the Law Reports version of his judgement was one revised by Day J, in which he omitted the sentence which ends the Law Times report, so that the true and only ratio of the decision is that a corporation may sue for a libel affecting property, but not for one merely affecting personal reputation.

Metropolitan Saloon Omnibus Co Ltd v Hawkins (1859) 4 H & N 87 was an action by a company incorporated under the Joint Stock Companies Act 1856 (19 & 20 Vict c 47) in respect of a libel imputing to it insolvency, mismanagement and dishonest carrying on of its affairs. The Court of the Exchequer held the action to be maintainable. Pollock CB, in the passage referred to by Day J, said, at p90:

"That a corporation at common law can sue in respect of a libel there is no doubt. It would be monstrous if a corporation could maintain no action for slander of title through which they lost a great deal of money. It could not sue in respect of an imputation of murder, or incest, or adultery, because it could not commit those crimes. Nor could it sue in respect of a charge of corruption, for a corporation cannot be guilty of corruption, although the individuals composing it may. But it would be very odd if a corporation had no means of protecting itself against wrong; and if its property is injured by slander it has no means of redress except by action. Therefore it appears to me clear that a corporation at common law may maintain an action for a libel by which its property is injured."

In South Hetton Coal Co Ltd v North-Eastern News Association Ltd [1894] 1 QB 133 a newspaper had published an article alleging that the houses in which the company accommodated its colliers were in a highly insanitary state. The Court of Appeal held that the company was entitled to maintain an action for libel without proof of special damage, in respect that the libel was calculated to injure the company's reputation in the way of its business. Lord Esher MR said, at p 138:

"I have considered the case, and I have come to the conclusion that the law of libel is one and the same as to all plaintiffs; and that, in every action of libel, whether the statement complained of is, or is not, a libel, depends on the same question--viz, whether the jury are of opinion that what has been published with regard to the plaintiff would tend in the minds of people of ordinary sense to bring the plaintiff into contempt, hatred, or ridicule, or to injure his character. The question is really the same by whomsoever the action is brought--whether by a person, a firm, or a company. But though the law is the same, the application of it is, no doubt, different with regard to different kinds of plaintiffs. There are statements which, with regard to some plaintiffs, would undoubtedly constitute a libel, but which, if published of another kind of plaintiffs, would not have the same effect."

He went on to say that certain statements might have the same effect, whether made with regard to a person, or a firm, or a company, for example statements with regard to conduct of a business, and having elaborated on the question whether or not a particular statement might reflect on the manner of conduct of a business, continued, at p139:

"With regard to a firm or a company, it is impossible to lay down an exhaustive rule as to what would be a libel on them. But the same rule is applicable to a statement made with regard to them. Statements may be made with regard to their mode of carrying on business, such as to lead people of ordinary sense to the opinion that they conduct their business badly and inefficiently. If so, the law will be the same in their case as in that of an individual, and the statement will be libellous. Then, if the case be one of libel--whether on a person, a firm, or a company--the law is that the damages are at large. It is not necessary to prove any particular damage; the jury may give such damages as they think fit, having regard to the conduct of the parties respectively, and all the circumstances of the case."

In National Union of General and Municipal Workers v Gillian [1946] KB 81 the Court of Appeal held that a trade union could, in general, maintain an action in tort, and that an action for libel was no exception to that rule. No detailed consideration was given to the nature of the statements in respect of which the action might lie, though Scott LJ, at p87, referred to the disintegration of a trade union which might result from a libel, and Uthwatt J, at p88, said that he saw no reason why a non-trading corporation should not have the same rights as a trading corporation as respects imputations on the conduct by it of its activities.

The second case involving proceedings by a local authority is Bognor Regis Urban District Council v Campion [1972] 2 QB 169, a decision of Browne J. Mr Campion had distributed at a meeting of a ratepayers' association a leaflet savagely attacking the council, which sued him for libel. At the trial Mr Campion conducted his own case without the assistance of solicitors or counsel. Browne J found in favour of the council and awarded it damages of GBP2,000. At p173, he stated his intention to apply a principle to be found in National Union of General and Municipal Workers v Gillian [1946] KB 81, from which he quoted extensively in the following pages. He continued [1972] 2 QB 169, 175:

"Just as a trading company has a trading reputation which it is entitled to protect by bringing an action for defamation, so in my view the plaintiffs as a local government corporation have a 'governing' reputation which they are equally entitled to protect in the same way--of course, bearing in mind the vital distinction between defamation of the corporation as such and defamation of its individual officers or members. I entirely accept the statement made in Gatley on Libel and Slander, 6th Edn (1967), p409, para 890: 'A corporation or company cannot maintain an action of libel or slander for any words which reflect, not upon itself, but solely upon its individual officers or members.' Then there is a quotation: 'To merely attack or challenge the rectitude of the officers or members of a corporation, and hold them or either of them up to scorn, hatred, contempt, or obloquy for acts done in their official capacity, or which would render them liable to criminal prosecution, does not give the corporation a right of action for libel.' I stress the words 'solely' and 'merely' in those passages. The quotation given in Gatley there is from a United States case, Warner v Ingersoll (1907) 157 Fed R 311."

Browne J then proceeded to consider Manchester Corporation v Williams, and after quoting from the judgement of Day J in the Law Times Report, 63 LT 805, 806 -807, said [1972] 2 QB 169, 177:

"Day J seems to put his judgement on two grounds; first, that a corporation may sue for a libel affecting property and not for one merely affecting personal reputation. If this was ever right, it has in my view been overruled by South Hetton Coal Co v North-Eastern News Association Ltd [1894] 1 QB 133, 134, 135 (where substantially this argument was used by the defendants) and by National Union of General and Municipal Workers v Gillian (where the Manchester Corporation case [1891] 1 QB 94 was cited). The other ground seems to have

been that a corporation cannot be guilty of corruption and therefore it cannot be defamatory to say or write that it has been guilty of corruption. This was based on the obiter dictum of Pollock CB in Metropolitan Saloon Omnibus Co v Hawkins (1859) 4 H & N 87 and was repeated later by Lopes LJ in South Hetton Coal Co v North-Eastern News Association Ltd [1894] 1 QB 133, 141. The Manchester Corporation case is severely criticised in Spencer Bower on Actionable Defamation (1908), pp 279 and 280; in Fraser on Libel and Slander, 7th Edn (1936), pp 89 and 90; and by Oliver J in Willis v Brooks [1947] 1 All ER 191 where he said, at p192, that after reading the National Union of General and Municipal Workers case he agreed with the editors of Fraser, who say, at p 90: 'It is respectfully submitted that the above statement of the law by Day J... is unsound in principle and would not be upheld in the Court of Appeal.' Oliver J in Willis v Brooks [1947] 1 All ER 191, 193 said: 'Counsel for the defendants'--who incidentally were Sir Valentine Holmes and Mr Milmo--'did not seriously contend that an action for libel imputing something very like corruption, as in this case, would not lie in any circumstances at the suit of a trade union,' and he awarded the plaintiffs GBP 500 damages. As I have said, the Manchester Corporation case was cited in the National Union of General and Municipal Workers case and the libel in that case seems to have imputed among other things something very like corruption."

Finally, he said, at p178:

"The actual decision in the Manchester Corporation case can perhaps be supported, as Mr Waterhouse suggested, on the argument that the libel there was not capable of referring to a corporation consisting (as the plaintiffs did) of the mayor, aldermen and citizens, and not, as here, of the chairman and councillors. I think that that case is distinguishable from this on that ground, and also on the ground that in my view none of the statements in the leaflet in this case actually impute corruption. But I hope that the Court of Appeal will soon have occasion to consider the Manchester Corporation case."

It is to be observed that Browne J did not give any consideration to the question whether a local authority, or any other body exercising governmental functions, might not be in a special position as regards the right to take proceedings for defamation. The authorities cited above clearly establish that a trading corporation is entitled to sue in respect of defamatory matters which can be seen as having a tendency to damage it in the way of its business. Examples are those that go to credit such as might deter banks from lending to it, or to the conditions experienced by its employees, which might impede the recruitment of the best qualified workers, or make people reluctant to deal with it. The South Hetton Coal Co case [1894] 1 QB 133 would appear to be an instance of the latter kind, and not, as suggested by Browne J, an authority for the view that a trading corporation can sue for something that does not affect it adversely in the way of its business. The trade union cases are understandable upon the view that defamatory matter may adversely affect the union's ability to keep its members or attract new ones or to maintain a convincing attitude towards employers. Likewise in the case of a charitable organisation the effect may be to discourage subscribers or otherwise impair its ability to carry on its charitable objects. Similar considerations can no doubt be advanced in connection with the position of a local authority. Defamatory statements might make it more difficult to borrow or to attract suitable staff and thus affect adversely the efficient carrying out of its functions.

There are, however, features of a local authority which may be regarded as distinguishing it from other types of corporation, whether trading or non-trading. The most important of these features is that it is a governmental body. Further, it is a democratically elected body, the

electoral process nowadays being conducted almost exclusively on party political lines. It is of the highest public importance that a democratically elected governmental body, or indeed any governmental body, should be open to uninhibited public criticism. The threat of a civil action for defamation must inevitably have an inhibiting effect on freedom of speech. In City of Chicago v Tribune Co (1923) 139 NE 86 the Supreme Court of Illinois held that the city could not maintain an action of damages for libel. Thompson CJ said, at p90:

"The fundamental right of freedom of speech is involved in this litigation, and not merely the right of liberty of the press. If this action can be maintained against a newspaper it can be maintained against every private citizen who ventures to criticise the ministers who are temporarily conducting the affairs of his government. Where any person by speech or writing seeks to persuade others to violate existing law or to overthrow by force or other unlawful means the existing government, he may be punished... but all other utterances or publications against the government must be considered absolutely privileged. While in the early history of the struggle for freedom of speech the restrictions were enforced by criminal prosecutions, it is clear that a civil action is as great, if not a greater, restriction than a criminal prosecution. If the right to criticise the government is a privilege which, with the exceptions above enumerated, cannot be restricted, then all civil as well as criminal actions are forbidden. A despotic or corrupt government can more easily stifle opposition by a series of civil actions than by criminal prosecutions..."

After giving a number of reasons for this, he said, at p90:

"It follows, therefore, that every citizen has a right to criticise an inefficient or corrupt government without fear of civil as well as criminal prosecution. This absolute privilege is founded on the principle that it is advantageous for the public interest that the citizen should not be in any way fettered in his statements, and where the public service or due administration of justice is involved he shall have the right to speak his mind freely."

These propositions were endorsed by the Supreme Court of the United States in New York Times Co v Sullivan (1964) 376 US 254, 277. While these decisions were related most directly to the provisions of the American Constitution concerned with securing freedom of speech, the public interest considerations which underlaid them are no less valid in this country. What has been described as "the chilling effect" induced by the threat of civil actions for libel is very important. Quite often the facts which would justify a defamatory publication are known to be true, but admissible evidence capable of proving those facts is not available. This may prevent the publication of matters which it is very desirable to make public. In Hector v Attorney-General of Antigua and Barbuda [1990] 2 AC 312 the Judicial Committee of the Privy Council held that a statutory provision which made the printing or distribution of any false statement likely to undermine public confidence in the conduct of public affairs a criminal offence contravened the provisions of the constitution protecting freedom of speech. Lord Bridge of Harwich said, at p318:

"In a free democratic society it is almost too obvious to need stating that those who hold office in government and who are responsible for public administration must always be open to criticism. Any attempt to stifle or fetter such criticism amounts to political censorship of the most insidious and objectionable kind. At the same time it is no less obvious that the very purpose of criticism levelled at those who have the conduct of public affairs by their political opponents is to undermine public confidence in their stewardship and to persuade the electorate that the opponents would make a better job of it than those presently holding office. In the light of these considerations their Lordships cannot help viewing a statutory provision

which criminalises statements likely to undermine public confidence in the conduct of public affairs with the utmost suspicion."

It is of some significance to observe that a number of departments of central government in the United Kingdom are statutorily created corporations, including the Secretaries of State for Defence, Education and Science, Energy, Environment and Social Services. If a local authority can sue for libel there would appear to be no reason in logic for holding that any of these departments (apart from two which are made corporations only for the purpose of holding land) was not also entitled to sue. But as is shown by the decision in Attorney-General v Guardian Newspapers Ltd (No 2) [1990] 1 AC 109, a case concerned with confidentiality, there are rights available to private citizens which institutions of central government are not in a position to exercise unless they can show that it is the public interest to do so. The same applies, in my opinion, to local authorities. In both cases I regard it as right for this House to lay down that not only is there no public interest favouring the right of organs of government, whether central or local, to sue for libel, but that it is contrary to the public interest that they should have it. It is contrary to the public interest because to admit such actions would place an undesirable fetter on freedom of speech. In Die Spoorbond v South African Railways, 1946 AD 999 the Supreme Court of South Africa held that the South African Railways and Harbours, a governmental department of the Union of South Africa, was not entitled to maintain an action for defamation in respect of a publication alleged to have injured its reputation as the authority responsible for running the railways. Schreiner JA said, at pp 1012-1013:

"I am prepared to assume, for the purposes of the present argument, that the Crown may, at least in so far as it takes part in trading in competition with its subjects, enjoy a reputation, damage to which could be calculated in money. On that assumption there is certainly force in the contention that it would be unfair to deny to the Crown the weapon, an action for damages for defamation, which is most feared by calumniators. Nevertheless it seems to me that considerations of fairness and convenience are, on balance, distinctly against the recognition of a right in the Crown to sue the subject in a defamation action to protect that reputation. The normal means by which the Crown protects itself against attacks upon its management of the country's affairs is political action and not litigation, and it would, I think, be unfortunate if that practice were altered. At present certain kinds of criticism of those who manage the state's affairs may lead to criminal prosecutions, while if the criticism consists of defamatory utterances against individual servants of the state actions for defamation will lie at their suit. But subject to the risk of these sanctions and to the possible further risk, to which reference will presently be made, of being sued by the Crown for injurious falsehood, any subject is free to express his opinion upon the management of the country's affairs without fear of legal consequences. I have no doubt that it would involve a serious interference with the free expression of opinion hitherto enjoyed in this country if the wealth of the state, derived from the state's subjects, could be used to launch against those subjects actions for defamation because they have, falsely and unfairly it may be, criticised or condemned the management of the country. Such actions could not, I think, be confined to those brought by the railways administration for criticism of the running of the railways. Quite a number of government departments, as appeared in the course of the argument, indulge in some form of trading on a greater or a lesser scale. Moreover, the government, when it raises loans, is interested in the good or bad reputation that it may enjoy among possible subscribers to such loans. It would be difficult to assign any limits to the Crown's right to sue for defamation once its right in any case were recognised."

These observations may properly be regarded as no less applicable to a local authority than to a department of central government. In the same case Watermeyer CJ, at p1009, observed that the reputation of the Crown might fairly be regarded as distinct from that of the group of individuals temporarily responsible for the management of the railways on its behalf. In the case of a local authority temporarily under the control of one political party or another it is difficult to say that the local authority as such has any reputation of its own. Reputation in the eyes of the public is more likely to attach itself to the controlling political party, and with a change in that party the reputation itself will change. A publication attacking the activities of the authority will necessarily be an attack on the body of councillors which represents the controlling party, or on the executives who carry on the day to day management of its affairs. If the individual reputation of any of these is wrongly impaired by the publication any of these can himself bring proceedings for defamation. Further, it is open to the controlling body to defend itself by public utterances and in debate in the council chamber.

The conclusion must be, in my opinion, that under the common law of England a local authority does not have the right to maintain an action of damages for defamation. That was the conclusion reached by the Court of Appeal, which did so principally by reference to article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953) (Cmd 8969), to which the United Kingdom has adhered but which has not been enacted into domestic law. Article 10 is in these terms:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.... 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

As regards the words "necessary in a democratic society" in connection with the restrictions on the right to freedom of expression which may properly be prescribed by law, the jurisprudence of the European Court of Human Rights has established that "necessary" requires the existence of a pressing social need, and that the restrictions should be no more than is proportionate to the legitimate aim pursued. The domestic courts have "a margin of appreciation" based upon local knowledge of the needs of the society to which they belong: Sunday Times v United Kingdom (1979) 2 EHRR 245; Barthold v Germany (1985) 7 EHRR 383 and Lingens v Austria (1986) 8 EHRR 407, 418. The Court of Appeal approached the matter upon the basis that the law of England was uncertain upon the issue lying at the heart of the case, having regard in particular to the conflicting decisions in Manchester Corporation v Williams [1891] 1 QB 94 and Bognor Regis Urban District Council v Campion [1972] 2 QB 169 and to the absence of any relevant decision in the Court of Appeal or in this House. In that situation it was appropriate to have regard to the Convention. Balcombe LJ referred in this connection to Reg v Secretary of State for the Home Department, Ex parte Brind [1991] 1 AC 696; Attorney-General v Guardian Newspapers Ltd [1987] 1 WLR 1248; In re W (A Minor) (Wardship: Restrictions on Publication) [1992] 1 WLR 100; and Attorney-General v Guardian Newspapers Ltd (No 2) [1990] 1 AC 109. Having examined other authorities he concluded, having carried out the balancing exercise requisite for purposes of article 10 of the Convention, that there was no pressing social need that a corporate public authority should have the right to sue in defamation for the protection of its reputation. That must certainly be

true considering that in the past hundred years there are only two known instances of a defamation action by a local authority. He considered that the right to sue for malicious falsehood gave such a body all the protection which was necessary. Similar views were expressed by Ralph Gibson and Butler-Sloss LJJ [1992] QB 770, 824, 834, who observed that the law of criminal libel might be available in suitable cases, to afford additional protection. All three Lords Justices also alluded to the consideration that the publication of defamatory matter concerning a local authority was likely to reflect also on individual councillors or officers, and that the prospect of actions for libel at their instance also afforded some protection to the local authority.

My Lords, I have reached my conclusion upon the common law of England without finding any need to rely upon the European Convention. My noble and learned friend, Lord Goff of Chieveley, in Attorney- General v Guardian Newspapers Ltd (No 2) [1990] 1 AC 109, 283-284, expressed the opinion that in the field of freedom of speech there was no difference in principle between English law on the subject and article 10 of the Convention. I agree, and can only add that I find it satisfactory to be able to conclude that the common law of England is consistent with the obligations assumed by the Crown under the Treaty in this particular field.

For these reasons I would dismiss the appeal. It follows that Bognor Regis Urban District Council v Campion [1972] 2 QB 169 was wrongly decided and should be overruled.

Lord Griffiths: My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Keith of Kinkel, and for the reasons he gives, I, too, would dismiss the appeal.

Lord Goff of Chieveley: My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Keith of Kinkel, and for the reasons he gives, I, too, would dismiss the appeal.

Lord Browne-Wilkinson: My Lords, I, too, would dismiss the appeal for the reasons given in the speech of my noble and learned friend, Lord Keith of Kinkel.

Lord Woolf: My Lords, I, too, would dismiss the appeal for the reasons given in the speech of my noble and learned friend, Lord Keith of Kinkel.

Appeal dismissed with costs.

Solicitors: Kingsford Stacey for Solicitor, Derbyshire County Council; Biddle Co.