CALCUTTA HIGH COURT

The Englishman, Ltd

Vs

Lajpat Rai

(Harington and Woodroffe, JJ.)

11.03.1910

JUDGMENT

Harington, J.

1. This is an appeal from a decree of this Court in its Original jurisdiction, under which the plaintiff was awarded damages to the extent of Rs. 15,000 for libel.

2. The libel was in the following terms: It is about time now that the true facts as to the deportation of Lajpat Rai were given out. Last year the native officers of several of the native regiments in the Punjab confidentially reported to their commanding officer that persistent efforts were being made to tamper with the loyalty of the sepoys. In due course the commanding officer 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 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 Lyallpur 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 Colony 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 Lala 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 Punjabi 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 the half-religious, half-political fanatics to this half-sane, half-mad brand that are always the most dangerous conspirators.

3. The defendants admitted publication and alleged that, in so far as the libel consisted of allegations of fact, it was true; and in so far as it consisted of expressions of opinion, they were a matter of fair comment on a question of public interest.

4. The alleged libel was published in an issue of the defendant's newspaper on September 10th, 1907. In the early part of that year there had been considerable discontent in the Punjab: a Bill, called the Canal Colonization Bill, was pending before the Punjab Legislative Council: it was a very unpopular measure amongst certain classes of the community, and was subsequently vetoed by the Government: this proposed piece of Legislation afforded to those who were desirous of prompting discontent a ready means of inflaming the minds of the community.

5. So serious was the state of affairs that the Government was compelled to have recourse to Regulation III of 1818, and under that Regulation the plaintiff and Ajit Singh were deported.

6. It was while the plaintiff was in custody under that Regulation that the defendants published the article complained of.

7. At the trial, the defendants stated that they would not proceed with their plea of justification: they contended that they were not liable in damages because, in the House of Commons, the Secretary of State for India, both in the answers which he gave to questions relating to the plaintiff, and in speeches which he made on the same subject, had made in effect the same statements as those which appeared in their newspaper: they also relied on the circumstance that the plaintiff had in fact been deported.

8. The learned Judge was of opinion that the libel imputed to the plaintiff the commission of an offence punishable under Section 131 of the Indian Penal Code with transportation for life: that

the statements of fact made by the defendants were false and the comments were unfair, and has awarded to the plaintiff damages to the extent of Rs. 15,000.

9. For the appellants it has been argued (i) that the words referring to the plaintiff are not defamatory per se and do not in themselves allege the commission of a criminal offence (ii) That the statements which do refer to the plaintiff were comments made bona fide on allegations made in Parliament, and that the defendants were entitled to make use of statements made by the Secretary of State in Parliament. (iii) That the alleged libel only defamed the plaintiff politically. The damages, therefore, should have been nominal, for the plaintiff after having been deported had no political reputation to lose.

10. The first question to be considered is as to what is the meaning to be attached to the libel. It contains, inter alia, the statement that "Lajpat Rai has been guilty of tampering with the loyalty of the Punjabi sepoys." It has been argued that the expression "tamper with the loyalty of a sepoy" means something less than "attempt to seduce a sepoy from his duty," and reliance is placed on the derivation of the word "tamper" and the meaning put, on it in the dictionary. To my mind little importance can be attached to this. The question to be decided is, what would a reasonable man understand to be conveyed by the alleged libel? To ascertain this, the libel must be read as a whole. Now, the article contains a statement that native officers in the native regiments in the Punjab confidentially reported to their commanding officers that persistent attempts were being made to tamper with the loyalty of the sepoys: that the Canal Colonies Bill was being used to inflame the sepoys against the Government: that the native officers urged that unless the Canal Colonies Bill was vetoed, they could not answer for the loyalty of the native army in the Punjab.

11. If the article containing these passages be read as a whole, I think that the statement in the article "That Lajpat Rai has been guilty of tampering with the loyalty of the Punjab sepoys" would convey to the ordinary mind that Lajpat Rai had utilized the Canal Colonies Bill as a means of making the Punjab sepoys so disloyal that they could not be trusted to obey, and would not obey the orders of their officers.

12. I think it amounts to an allegation that the plaintiff has attempted to seduce the soldiers from their duty, and that he has attempted by word or otherwise to excite feelings of disaffection to the Government established by law in British India. This, in my opinion, amounts to an imputation that he has been guilty of offences under Section 124A and 131 of the Indian Penal Code, and these offences are punishable by transportation for life.

13. My view of the meaning of the article complained of disposes of the appellants' contention that it is fair comment on a matter of public interest.

14. The fact of the plaintiff's deportation: the question whether he should be released or not: were topics of public interest on which the defendants in common with all the other subjects of the King were entitled to comment fairly, and to express opinions either in favour of or against any proposal to release the plaintiff. Had the defendants, therefore, contented themselves with commenting on the fact of deportation of the plaintiff, and confined themselves to expressions of opinion as to the propriety of his release or otherwise, there would have been nothing to complain of as long as the comment was fair--for it is well-settled that fair comment on a matter of public interest is not libel: see Merivale v. Carson (1887) 20 Q.B.D. 275, 283 at page 283 per Bowen, L.J. But the defendants have gone further and have stated that the plaintiff has been guilty of a criminal offence: that is a statement of fact which, not having been justified by the defendants, must be presumed to be untrue. The article, therefore, contains an untrue statement of fact concerning the plaintiff for which the maker is liable in damages; the question, therefore, whether the remainder of the article is comment or not has no bearing on the question whether the defendants be liable or not.

15. When it is admitted that the alleged libel was published, that it referred to the plaintiff, and it is established that the libel contains a statement that the plaintiff has committed an offence for which he is liable to be punished as a criminal, then the publisher of the libel will be liable in damages unless he can show that the libel is true, or that it was published bona fide and without malice on a privileged occasion. In the present case the plea of justification has been withdrawn: the defendants did not plead that the occasion was privileged: the only question, therefore, which remained was the question of damages.

16. In my opinion, if a person takes upon himself to publish on his own authority in a newspaper to the world at large that another has committed a criminal offence, he will be liable in damages unless he is able to prove at the trial that what he published is true in substance and in fact.

17. But it has been argued in the present case that the defendant is not liable, because it was stated in the House of Commons by a responsible Minister of the Crown that the plaintiff had been tampering with the sepoys--the defendant was entitled to accept that statement and to comment on it: the statements of fact, therefore, the defendant might lawfully repeat without incurring any liability: and he was entitled to comment on this statement in his newspaper.

18. Now, it is well-settled law that the publisher of a newspaper is entitled to publish a fair and accurate report of proceedings in Parliament, even though the report contains statements which are defamatory of an individual: Wason v. Walter (1868) L.R. 4 Q.B. 73.

19. I agree that the defendant was entitled to publish that the Secretary of State for India had made in the House of Commons such and such a statement, and as long as he published a

substantially accurate account of what was said in the House of Commons, not as a statement of his own, but as a statement made in that place, then I think he would be doing nothing unlawful.

20. But in the present case the libel complained of does not purport to be a report of what any one said in the House of Commons. It begins with the words "It is about time now that the true facts as to the deportation of Lajpat Rai were given out." The inference which would be drawn by the ordinary reader would be that the true facts had not been given out either in Parliament or elsewhere, and that the assertions of fact that the writer goes on to make were based on information not accessible to the public. The only reference to what was said in Parliament is a reference, not to any statement of fact, but to a "half promise given by Mr. Morley in Parliament for the release of Lajpat Rai."

21. No doubt the fair and accurate report of a speech made in Parliament is privileged, even though it contains facts defamatory to the plaintiff. But no authority has been cited for the proposition that a person is entitled to republish those defamatory statements, not as a report of what has been said in Parliament, but as a statement of his own.

22. Such a proposition is directly contrary to the law laid down by the learned author of Odgers on Libel and Slander, 4th Edition, page 169, who says that the prior publication of a libel is no justification for its being copied and republished. If the first publication be privileged, that will not render the second publication privileged. I have no doubt that this is a correct statement of the law, and that a libel which is privileged when it appears as the report of a speech in Parliament is not privileged when it appears as the statement of a newspaper correspondent.

23. At the trial a large body of evidence was admitted as to what had been said in the House of Commons by Mr. Morley and by a number of other members of Parliament.

24. Had the statements of fact in the article published by the defendant purported to be statements of what was said in Parliament, then no doubt evidence of what was said would be admissible on the question whether the defendant had published a fair and accurate report of what was then said. But in the present case the statements of fact do not purport to be quotations from speeches made in the House of Commons.

25. The issue, therefore, whether they were fair and accurate statements of what was said in the House of Commons does not arise. I do not think, therefore, that what was said in the House of Commons was relevant to any issue raised in this case. If it be assumed that the assertions of fact which are defamatory of the plaintiff were made in the House of Commons, that circumstance does not affect the liability of a person who takes these defamatory statements and publishes them to the world as his own.

26. Then it is argued that the defendant was entitled to rely on the fact that plaintiff had been deported, and on the statements made about him in the House of Commons, as showing that he was a person whose character and reputation were such as to disentitle him to anything but nominal damages.

27. Since the decision on Scott v. Sampson (1882) 8 Q.B.D. 491, it has been settled that a defendant can, in mitigation of damages, give evidence of the plaintiff's bad character, but that evidence of rumours and suspicions to the same effect as the defamatory matter cannot be given.

28. But assuming that evidence of what was said in the House of Commons was admissible, can what was said there be proved without procuring the evidence of some person who was present and heard what was said. It is contended by the defendant that what was said in Parliament can be proved by the production of the volume of Hansard's Reports of Parliamentary Debates containing a report of the speech it is desired to prove. That, it is said, is sufficient without the evidence of the person who made the report, or any person who was present when the speech was made.

29. In strictness, a speech would be proved by calling the reporter, or obtaining his evidence on commission. He could produce the report he had made at the time, and refreshing his memory from what he had written down when the speech was delivered, he could prove what the speaker said--and he would be liable to be cross-examined to show that he had misreported what was said. On principle, if it is sought to prove things said, some person in whose presence the things were said must be called, in order that the person against whom the evidence is given may be enabled to question its accuracy by cross-examination.

30. It is contended that this does not apply in this country, and that, under the provisions of Section 57 of the Evidence Act, Hansard's Reports are admissible for the purpose of proving what was said in the House of Commons.

31. Section 57 provides that the Court shall take judicial notice of "the course of proceeding of Parliament: "but the course of proceeding appears to be something distinct from the proceedings themselves: they may be proved under Section 78(2) by the journals of the House of Commons or by copies purporting to be printed by order of the Government. If, therefore, it had been necessary for the defendant to prove the proceedings of the House of Commons, he could by statute have done so by producing a copy of the Journal of the House of Commons purporting to be printed by order of the Government without calling any person who was present at the proceedings. There is no evidence as to whether the speeches of the questions put, and answers given thereto, are recorded in the Journals of the House as part of the proceedings of the Legislature. I infer, therefore, that they are not so recorded. If they were, they could be proved as

provided by Section 78(2).

32. Then it is contended that a speech made in Parliament is a matter of public history on which the Court may resort for its aid to appropriate books or documents of reference, and that Hansard is such an appropriate book.

33. This section does not appear to me to have the effect of absolving the parties from any rules governing the proof of facts on which they desire to rely. It is to be observed that the section does not say how any fact, historical or otherwise, is to be proved by the parties, but gives the Court liberty to resort for its aid to appropriate books or documents of reference on matters of public history.

34. I will not attempt to define a matter of public history, but, even if it be assumed that the fact that the plaintiff was deported for sedition be regarded as a matter of public history, I do not think that the terms of a speech made by a person who is not yet a historical personage, in the presence of persona who still exist? can be said to be a matter of public history. I do not think the section which enables the Court to look at a book of reference for its own aid absolves a party from producing the best evidence available of any fact which he desired to prove, and a report, whether published in Hansard or elsewhere, is not the best evidence which can be procured.

35. To sum up my view of the case:

36. The article complained of contains the imputation that the plaintiff has committed a criminal offence. This is not comment. The fact that another person on a privileged occasion made a similar statement, even if proved, is no protection to the defendants, because they do not purport to be reporting what was said on that privileged occasion.

37. The case, therefore, resolves itself into a question of damages.

38. Now, the damages have been assessed at a very high figure. The grounds which render the Courts in England reluctant to interfere on the question of damages in a case tried before a jury do not exist in this country.

39. The reasons which influence a jury in assessing the damages do not appear; but in this country the reasons which have influenced the learned Judge in assessing damages appear in the" judgment, and therefore are as open to be dealt with by the Court of Appeal as any other portion of the judgment. The plea of justification being withdrawn, it was not open to the defendant to give evidence to prove the truth of the libel, nor was he entitled to put the plaintiff facts in cross-examination, which, if admitted, would have established a plea of justification. But the gist of the action is the damage to the plaintiff's character: the defendant, therefore, was quite entitled to

cross-examine the plaintiff to show that he was a person whose reputation would not be damaged by this particular libel.

40. The particular libel contained the imputation of an offence of a political nature, viz., one under Chapter VI of the Indian Penal Code dealing with offences against the State and in estimating the injury done to the plaintiff's reputation--and this is the gist of the action--the position which the plaintiff had adopted towards the State must be taken into consideration For example, a man who had been conspicuous in his efforts to allay disaffection, to preserve peace and order, and to promote contentment amongst the people, would be entitled, in my opinion, to far heavier damages for a libel imputing to him the commission of offences under Sections 131 and 124A of the Indian Penal Code, than would a man who had avowedly mixed himself up with movements calculated to excite disaffection and hostility against the State. The libel in the former case would contain a far heavier imputation against the moral character of the person defamed than it would in the latter.

41. It appears on the record that the plaintiff was a prominent politician: that at a time of political unrest he appeared at a public meeting at Lyallpur, which was got up by those who were agitating against the Punjab Lands Bill. On his arrival, Ajit Singh was addressing a crowd: this was irregular, because no chairman had been elected; his speech was stopped, a chairman was elected and the meeting proceeded. Ajit Singh spoke again using "strong words." The plaintiff spoke, twice opposing the Canal Colonization Bill, to an audience amongst whom there were retired sepoys and retired military men. The Punjab Army is recruited to some extent from the peasantry of the district in which the meeting was held. The plaintiff showed to the people at the meeting that the Government were changing by legislation the agreements made with the people to the detriment of the latter. These meetings, the plaintiff says, would inflame the minds of the people: and he says the people in the Punjab were very angry.

42. The plaintiff was a man of considerable influence in the Punjab. He was one of the prominent men. As such he took part in a meeting calculated to inflame the minds of the people against the Government. Seven weeks after that meeting he was deported under a Regulation empowering the Government to take that step for the purpose of preserving a portion of His Majesty's dominions from internal commotion.

43. In my opinion these matters ought to have been taken into consideration in assessing the damages: the fact of the deportation alone, if there were no other evidence of any sort, probably would not weigh heavily in reduction of damages, but it must not be looked at alone, but in conjunction with the events which have preceded, it.

44. In my view, the damage done to the reputation of a person who has taken a prominent part in

inflaming the minds of the people against the Government by a libel imputing an offence against the State must be estimated on a far lower basis than that done to the reputation of a person who has not taken up such a position.

45. Had the plaintiff used the influence which he undoubtedly possessed for the purpose of promoting peace and contentment I should have agreed that he was entitled to very heavy damages for a libel imputing to him an attempt by underhand means to injure that which he professed to support. He thought proper, however, to throw his influence on the side of those whose object was to inflame the minds of the people, and is deported for the purpose of preserving the peace of the country.

46. The injury, therefore, to his reputation by the imputation contained in the defendant's libel is far less than it would have been had he professed to use his influence for the purpose of allaying rather than promoting discontent.

47. But while I think that the damages have been assessed on far too high a scale, I do not agree with the appellants that contemptuous or merely nominal damages should be given.

48. The defendants placed on the record a plea of justification that plea was only withdrawn at the hearing. The circumstance that a defendant has continued to assert the truth of that which he is unable to prove has always been regarded as a matter in aggravation of damages. This alone is an answer to the appellants' contention that only nominal damages should be given.

49. I do not think the evidence warrants a finding that the defendants were actuated by personal spite against the plaintiff as an individual: on the contrary, I think they desired to express the views of that section of the community which was of opinion that the release of the plaintiff would be a danger. In support of those views they have published an article, marked by vulgarity and bad taste, containing libellous statement, to the effect that the plaintiff has committed a criminal offence against the State. On the other hand, it has been shown that at a time of political unrest the plaintiff was taking a prominent part in a proceeding calculated to inflame people against the State, and that he was deported shortly after this proceeding.

50. What has been shown would have entitled the defendants to express an opinion that it would be dangerous to release the plaintiff, but though it gives ground for expression of opinion, it does not justify the misstatement of fact. But the circumstance that facts have been elicited giving ground for an expression of opinion against the release of the plaintiff ought to have been taken into consideration.

51. In my view, under these circumstances the damages to be assessed must be substantial, but not immoderate. The amount, therefore, I would award would be the equivalent of £100 of

English money (Rs. 1,500). The decree of the Court of first instance must be varied by reducing the damage to Rs. 1,500.

52. With regard to the costs, the respondent has been successful on all points, save that of the quantum of damages. That being so, in my opinion he should have the costs of the appeal.

Woodroffe, J.

53. The conclusion at which I have also arrived is that the defendants have failed to justify in law the statements they have made of the plaintiff; and that, having libelled him, they must pay damages; but that the evidence discloses circumstances which do not justify the award of the very large sum which the decree of Mr. Justice Fletcher has given him.

54. According to that evidence the plaintiff is a leading Indian politician. About March 1907 he took an active part in an agitation against the proposed Canal Colonization Bill, which affected a class from which the Punjab sepoys are drawn, as also colonist military pensioners. He says that the people were very angry and greatly excited: and in a memorial which he helped to prepare, it was alleged that the proposed Bill had created panic and commotion throughout the Punjab and that it was calculated to shake the confidence of the loyal peasant in the justice and benevolence of Government. There was generally then a state of affairs which is currently called "political unrest." The plaintiff and a man, named Ajit Singh, who was subsequently deported, took apparently a leading part in the agitation against the Bill, though the plaintiff denies that in such agitation he was associated with Ajit Singh. The plaintiff, however, appeared at least on one occasion at Lyallpur on the same platform as Ajit Singh, though he says he did not know he was going to speak; "Strong words," he says, "were used by Ajit Singh," though apparently without any objection from him. Various other further meetings were held besides that at Lyallpur. Retired sepoys, he says, attended these meetings. But he states that at Lyallpur he did not see any officers or men in active military service "or at any other meeting in any political way." These meetings, he admits, would inflame the mind of those who attended them. He denies, however, that he was guilty of sedition or of tampering with the loyalty of the sepoy; and it is suggested on his behalf that he was merely doing what he was entitled to do in agitating constitutionally against an unpopular and unwise measure. It has, however, been alleged by the Secretary of State for India that the agitation in which the plaintiff was engaged was not merely an agrarian movement provoked by the proposed Bill, but a general political movement in which there was a deliberate heating of the political, atmosphere preparatory to the agrarian meeting at Rawalpindi, which gave rise to the disorders in the Punjab: in other words, that the Colonization Bill was, with other things, merely fuel for an agitation on wider lines and for other purposes. The argument on behalf of the respondent has seemed to assume that his action was limited to one single appearance at Lyallpur. It is more reasonable, however, to suppose that the respondent as a

political agitator, was agitating; nor does his evidence suggest to me this very limited view of the part taken by him in the agitation. He admittedly met certain political associations; shaped the memorial; and might (he says) have attended another meeting besides that at Lyallpur. As one might have expected, he adds that he has at one time or another contributed to papers and criticised in print and speech, and has doubtless busied himself in many other ways in the extensive sphere of public movements,--political, social and educational,--in which he states he is interested.

55. On the 9th May 1907, quite shortly after and following on this agitation, the plaintiff was arrested and deported under the provisions of Regulation III of 1818 as extended to the Punjab by Act IV, 1872. This Regulation provides that the Governor-General may place an individual under restraint as a State prisoner when the reasons stated in the preamble seem to him to require it. The reasons of State there set out embrace amongst others the security of the British dominions from internal commotion; and this may be done even where there is ground for judicial proceedings, when such proceedings are not adapted to the nature of the case, or may for other reasons be unadvisable or improper.

56. The learned Judge has held that this fact should not be taken into consideration in any way, and we have been urged in appeal to close our eyes to what is perhaps the most outstanding and wide-known event in the political career of the plaintiff, who complains of libellous statements with respect to his conduct in such career. This event obviously throws light on the character of his agitation previous thereto. It may certainly be affirmed that (subject to certain well-known limitations), what has probative force is evidence. Were this not so, the law of evidence would lie in deserved discredit. Then is there any rule of law to be implied either (as the learned Judge has done) from the terms of the Regulation itself, or in the Evidence Act, which excludes this fact from our consideration? I am, with all respect, unable to agree with the opinion of Mr. Justice Fletcher that the framers of the Regulation intended to exclude altogether the consideration of fact of the deportation in such a case as this. I find great difficulty in believing that they ever had in mind circumstances which have arisen now and for the first and only time during the period of nearly a century which has elapsed since the date of the Regulation. It is safer to assume that had they had any particular intention in this matter they would have expressed it, which they have not. Nor do the other circumstances to which the learned Judge refers justify the exclusion of this evidence. It is not the case that neither the public nor the plaintiff knew the reasons for the deportation. They have been published by the Secretary of State, who has, amongst other things, stated that the plaintiff was arrested "for the active promotion of open sedition" (Debate 13th May 1907). The statement in Hansard was read by the plaintiff in the Journal India. The plaintiff was, therefore, not debarred from showing that the published reasons were ill-founded; and in fact he has attempted to do so, as for instance in the case of the serious allegation of the

preaching of disaffection to soldiers in active service at Ferozepore. No doubt all the details of the circumstances which, in the opinion of Government, justified its action have not, for reasons of State, been disclosed. But if the plaintiff had proved to the, satisfaction of the Court by independent reliable evidence that there was no foundation in the published allegations, it would be time then to consider whether the deportation as induced by any undisclosed ground could fairly be used against him. This case does not arise.

57. In my opinion, therefore, there is nothing in the Regulation itself which excludes us from considering the deportation in this case; nor am I aware of any provisions in the Law of Evidence which excludes it. No doubt there are circumstances connected with this executive order which go to the weight which should be given to it. There is the possibility of error which is not unknown even in judicial proceedings conducted with every regularity in the presence of the party himself; and certainly such possibility is not diminished by the fact that these executive proceedings were taken ex parte against the plaintiff. On the other hand, and as against this, it must be remembered that these proceedings are of a very exceptional and stringent character, and it is reasonable, therefore, to assume (as I do) the exercise of more than ordinary care and caution before a reluctant recourse was had to them. The circum stance that the executive order was ex parte might have required further emphasis had the question before us been one of mulcting the plaintiff; but that is not the case here, where the party against whom it is used is himself seeking a decree for damages against the defendant. The fact of the deportation is, however, not inadmissible merely because the order which is its authority was passed ex parte. To use the example cited, by the Advocate-General, upon an issue of lunacy, the fact that a person had been at some past time placed (otherwise than under the direction of the Court) in detention as a lunatic would be some evidence upon the question of his soundness of mind, notwithstanding that he was no consenting party to such detention, and may indeed (madly as it may have appeared to some and sanely to others) have protested against it. Other examples may be given. Upon the issue whether a person behaved improperly at a meeting, the fact that he was turned out upon such an allegation, even though he Was not heard in answer to it, would be evidence; and that circumstance, combined with others, including the reputable and responsible character of the people who took this action, might form the basis of an inference that the alleged ground upon which he was turned out in fact existed. I am of opinion, therefore, that if the fact of deportation helps to explain the character of the political agitation in which the plaintiff admits that he was engaged, it should be considered. For, it is to be remembered, that in this case the deportation (for which reasons have been assigned) does not stand alone, but in relation to the other admitted facts of the case which, in their turn, serve to explain it. I desire, therefore, to be understood as confining my remarks to the admissibility of the evidence under the circumstanced here disclosed. But it has been said that the fact of the plaintiff's deportation does not serve to

elucidate his antecedent conduct, because it is alleged We do not know the reasons for such deportation. This is, however, not so, except in the sense that the whole of the circumstances which prompted the executive order have not been disclosed. We, however, know quite enough for the purposes of this case. Apart from any statement made by the Secretary of State, we know, from the preamble of the Regulation, that the plaintiff's arrest must have been ordered, because his conduct appeared to render his removal necessary to secure the British Dominions from internal commotion. But the matter does not rest there; for the Secretary of State for India has on various occasions stated in answer to questions which took exception to the deportation, the reasons which induced the Government to take this action. These statements are obviously not in themselves alone evidence of the existence of the facts spoken to; but they are evidence--and the best evidence--of the reasons alleged as the cause and justification of the action of Government, which is a totally different matter. If the fact of deportation can be considered, then the grounds of the Government's action are as much evidence as the action itself of which they are the alleged cause. The Secretary of State, whilst affirming his inability to say for what, if any, crime the plaintiff was arrested and deported, and refusing certain information which it was against the public interest to disclose, said (I summarise and abbreviate) as follows. The conditions affecting the Colonisation Act, which was not the main cause of disturbance in the Punjab, were greatly misrepresented. Of 28 meetings held by the leading agitators in the Punjab, 5 only related, even, ostensibly, to agricultural grievances. The remaining 23 were all purely political. The plaintiff took part in two of these meetings, of which one related to the Bill and the other was political. Ajit Singh took part in 13, of which 11 were political. It was not the case that there was no connection between the plaintiff and Ajit Singh. The Secretary of State had himself read public utterances of the plaintiff which were strongly of the nature of ante-British propaganda, The report of his speech quoted in the Wafadar, and of his speech at Lyallpur reported in the Punjabi, contained language which were not within the limits of constitutional agitation, but they were not the only grounds or information for resort to the Regulation under which he was deported. It was not the case that the movement in the Punjab was agrarian only and not political. It appeared, on the contrary, that there was a deliberate heating of the political atmosphere preparatory to the agrarian meeting at Rawalpindi. The plaintiff's action constituted him a danger to the State, and he had been arrested not for any legitimate agitation against any reasonable grievance, but for the active promotion of open sedition. The Secretary of State further informed Parliament that the plaintiff had been informed that the reason of his arrest and deportation was to preserve a portion of His Majesty's dominions from internal commotion, but that the plaintiff denied that he had ever done anything to cause such commotion. These statements, whether accurate as to their subject-matter or not, are evidence to show the grounds alleged by the Government as those upon which the plaintiff was arrested and deported. What then is the effect of such deportation? The legal presumption of regularity applies to official as well as to judicial proceedings, and it

operates in the present case to this extent that, in the absence of evidence to the contrary, it must be assumed that to the mind of Government the state of affairs appeared to be such as to justify the plaintiff's arrest and deportation. It may well be that in some particulars the plaintiff's conduct has been more severely judged than should have been the case. It is possible that in others-he may have suffered from false reports. It would, however, be ridiculous to hold that this appearance was in fact wholly illusory, and that the plaintiff's action had been misobserved and misrepresented throughout. On the contrary, I am satisfied that the Government would not have taken this exceptional action against the plaintiff unless, after the most careful consideration, his conduct appeared to justify it. We have it then on the plaintiff's evidence that he was engaged in a political agitation which ended in the order for his arrest and deportation; and that this order was issued because the plaintiff's agitation appeared to the Government to be such as to require measures to be taken for the security of the country from internal commotion. There is a legal presumption that the action taken appeared to the Government to be necessary; and it is unreasonable to suppose that this would so have appeared had the plaintiff's action been in fact of an entirely legal and legitimate character and free from blame as he asserts. The conclusion, therefore, at which I arrive is (to put the matter in the most favourable form for the plaintiff) that his conduct did in fact go so far beyond the limits of legitimate constitutional agitation as to justify action under the Regulation being taken against him. I am unable, therefore, to accept the plaintiff's statement that in the agitation (which he admits) he was in no way to blame and gave no ground for the action taken against him. It is not necessary to hold--and I do not say that the plaintiff has said what he knows to be false in this matter--a conclusion which would be inconsistent with the personal character which has admittedly been given to him. It is possible that he may have believed, and still believes, that he., did not exceed the bounds of legality. He may, however, not be the best judge in this matter. If, as I think, there is reason to believe that the plaintiff's conduct was, from a political point of view, blameworthy, then he is not entitled to damages such as he has been awarded on the footing that he has been free from all blame. But this is a different thing from holding (as we have been asked to do) that the facts and circumstances to which I have referred prove that the plaintiff tampered with the loyalty of the sepoy, so as to render him (in my reading of the libel) liable to a charge under Section 131 of the Penal Code. In my opinion these facts do not justify this inference for two reasons--Firstly, looking at the Regulation by itself, it cannot be inferred from the general circumstance that the plaintiff's action threatened the tranquillity of the country, that action was of the particular kind charged; and next, looking at the Regulation, together with the grounds of the deportation assigned by Government, I can find none from which, either by itself or in conjunction with the other facts of the case, I should be justified in holding (contrary to the oath of the plaintiff) that he had in fact tampered with the loyalty of the sepoys.

58. The deportation of the plaintiff was the subject of discussion in Parliament. Questions were asked of the Secretary of State for India, and these and his answers thereto and the statements of other members have been relied on by the defendants upon the issue of comment on a matter of public interest. They have, however, been objected to on two grounds. The first is that of want of proof, it being argued that the reports in "Hansard" may not be referred to in order to ascertain what has been said in Parliament. It has, however, not been suggested that the statements were not made, or that they have not been accurately reported. Several of these statements were put to the plaintiff during cross-examination. Reliance has been placed on the decision in McCarthey v. Kennedy (1905) The "Times," 4th March. That report is so meagre that it is not quite clear what was decided, but in any case the matter must be decided with reference to the provisions of the Evidence Act. Though Section 57 does, I think, aid the appellants, the penultimate paragraph does not bear the construction which they have put on it. That paragraph does not say whether the Court may or may not take notice of any fact. Still less does it say or mean that the Court shall or may take judicial notice of every matter which comes under the heads of description there given. It provides that when the Court does take judicial notice of the facts of which it is bound to take notice under Clauses 1 to 13, then it may refer to appropriate books of reference as to those facts. Speeches made in Parliament do not come within those clauses, for the "course of proceeding" referred to in Clause (4) is a different matter. This phrase does not refer to what was in fact done on any particular occasion, but to the general rules of procedure. But the section also adds (and in this it goes beyond English Law) that in all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books of reference. This is doubtless a provision primarily for the benefit of the Court and I agree with my learned brother that the section does not absolve the party from proof of any fact which does not fall within the provisions of Clauses 1 to 13. Facts, however, of which judicial notice may be taken are not limited to those of the nature specifically mentioned in these clauses. These are mentioned because, as regards them, the Court is given no discretion. As to others, the Court must determine in each case whether the fact is of such a well known and established character as to be the proper subject of judicial notice. A matter of public history may be such a fact. The tendency of modern practice is to enlarge the field of judicial notice: and the importance of the penultimate paragraph to my mind is this--that it indicates both an approval of this principle as also the kind of subjects of which (in application of such principle) judicial notice may be taken. The Indian case law and practice appear to me to have also proceeded on a liberal application of the power to take judicial notice. In the present case (for I am only concerned with that) the fact that there has been a political agitation in this country, that the plaintiff and others have been deported in consequence of the part said to have been taken by them in it, and that such agitation, conduct and deportation were the subject of debates in Parliament and in a general way what was said in such debates and therefore became widely known as to the alleged cause of such

deportation, appear to me to be matter of public history and of such notoriety that it is reasonable to assume their existence without formal proof. The fact that they are recent does not affect their character of notoriety, which is the basis of judicial notice. I think we may assume these facts in the present case with a greater sense of certainty, seeing that their existence has never been disputed, nor has the accuracy of the report in "Hansard" of these facts (so far as they occurred in Parliament) been put in issue. I am of opinion, therefore, that we may take judicial notice of the fact that there were debates in Parliament in which the subject of the plaintiff's conduct and deportation were discussed, and which debates Were themselves the subject of widespread comment.

59. Then, is Hansard an appropriate book of reference for the purpose (to use the words of the section) of enabling us to take judicial notice of the facts which we have been called upon to do? If it be not, I do not know of any other more appropriate. "Hansard" is itself almost a public institution. The first volume of its new series commenced in the year 1831 and was a continuation of the Parliamentary history to which reference seems to have been made in Damodar Gordhan v. Deoram Kanji (1876) I.L.R. 1 Bom. 367, 380, 386 with respect to speeches by Lord Thurlow and Lord Palmerstone. It is in short the established report of Parliamentary debates, and I believe it is the fact that in order to ensure accuracy the reports of speeches are submitted to members for their approval before publication. The learned Judge, therefore, in my opinion rightly, in the circumstances of the present case, permitted reference to Hansard in the Court below.

60. It is next argued that, assuming that the statements are properly before the Court, they are not relevant. In my opinion they are. I have shown one instance of this in the case of the published reasons for the deportation. They are further relevant on the issue of comment, and were, I understand, on this ground referred to. It may be that the defendant may fail upon that issue, but that can only be determined after the admission and consideration of the matter upon which his plea is made to rest. I have already referred to several of the statements of the Secretary of State. I here mention that on which the most stress has been laid in justification of the libel. It is to be found at page 42 of the paper book, where the Secretary of State gives out merely as a report based on the statement of an Indian Governor that the plaintiff was a revolutionary, who, though his private character appeared to be above approach, was actuated by the most intense hatred of the British Government, and had, "whilst keeping himself in the background, engineered the systematic propagandist of the last few months. He added--"In this agitation special attention, it is stated, had been paid to the Sikhs, and in the case of Lyallpur to the military pensioners." It was further reported that at Ferozepur disaffection was openly preached, men of the Sikh regiments having been invited to attend, and several hundreds of them having in fact acted upon the invitation. If it was intended to affirm, as beyond doubt, the plaintiff's personal responsibility

in respect of all the reported incidents of this agitation, the statement would have been obviously different both as to form and substance. It is consistent with this statement that the plaintiff, while taking a leading part in the agitation, was not in fact personally responsible for every incident which occurred in it. As to these charges the plaintiff, after a general denial that he tampered with the loyalty of the sepoys, swears as follows:" It was said in one extract (from Hansard) that leaflets were distributed at Ferozepur meeting, but I know of no such leaflets and I know of no meeting of this description held at Ferozepur." Some of the non-official members of Parliament expressed their belief in the innocence of the plaintiff, who was described by them variously as an ordinary land reformer, a moral teacher, a successful lawyer and man of property, who had, unlike Ajit Singh, never identified himself with violent schemes or seditious movements.

61. The article in suit was preceded by several others abusive of the plaintiff published by the defendants. The plaintiff admittedly enjoys a high private character and has never been detained otherwise than as a State prisoner under the Regulation. It was, therefore, not from a desire to be scrupulously fair that the defendants among other offensive allusions to the plaintiff describe him in these articles as a "jail bird." I am at a loss to conceive how the Editor of a responsible paper could think that any public service, of which we have heard so much on behalf of the defendants in this case, could be rendered by such articles as these in allaying the situation with respect to which they were written, nor do I understand how the article in suit was passed for publication. On its face it appears to be a piece of backstairs

gossip

relating to facts certainly obtained from unauthorized sources, and possibly by illegal means, though it is not necessary to suggest that the writer himself was privy to the illegality, if any. It asserts the truth of certain of its statements, notwithstanding official denials which are said, in an euphemistic phrase, to be falsehoods. In some respects this article has not been correctly read in the judgment under appeal. It is in the first place clear on a reading of it that the defendants' counsel could not have contended that all its statements were drawn from "Hansard." Secondly, the alleged official falsehoods do not refer to the matter of the libel. It is no doubt the case that no definite formal official charge has been made against the plaintiff in terms of the alleged libel. But there has been no public official denial of that fact. The statements which the writer asserted in spite of official denials refer to the alleged proposal and action of the Viceroy and the Commander-in-Chief. Thirdly, it is not the fact that the writer charged the Secretary of State with having concurred in the act of deportation solely because he dared not allow the then Commander-in-Chief to resign. The article makes it plain that according to the writer's alleged information both the Commander-in-Chief and the Viceroy were agreed upon the subject of the deportation of the plaintiff, and that the alleged difference between them was as to the advisability of vetoing the Canal Colonies Bill--a matter which does not affect the subject before us. Lastly, that the writer had in contemplation, in parts of his article, the debates in Parliament, is shown by the references thereto contained in the article itself. The question of the release of the

plaintiff was a question of public interest on which the defendants or any one else might fairly comment, and had the writer confined himself to citing the statements to which I have referred made by the Secretary of State himself, and saying that having regard to such statements it was unadvisable that the plaintiff should be released, the statement being fair comment would not have been open to question. Such comment would, however, have carried with it its own corrective, to be found in the proceedings on which it was based and to which the reader was referred. But I agree with Mr. Justice Fletcher that the writer did not do this. What he did was to assert as a fact the existence of certain military reports which have not been proved, and as to which, for all we know, the writer may have been misinformed; and then, on the information which he suggests he had received from these and possibly other secret sources, makes two statements of fact of his own for the truth of which he personally vouches: firstly, that these military reports stated that the plaintiff and Ajit Singh were the principal agitators, who were using the provisions of the Canal Colonies Bill to inflame the sepoys against the Government; and, secondly, that there was no possibility of doubt but that the plaintiff had been guilty of tampering with the loyalty of the Punjab sepoy. Whether the writer had, or the reader would have, the Penal Code in mind, the tenor of the whole article shows that the plaintiff was charged with having done acts in the nature of those dealt with by Section 131 of the Penal Code. These allegations are not made by way of comment on the debates in Parliament, but as the writer's own statements of fact; and, next, the statements in Hansard fall short of those in the defendant's article. I have already dealt with the character of the statement in Parliament at page 42 of the paper book. It is further significant that throughout the debates a tone of greater certainty prevails as regards the part taken by Ajit Singh as appears, amongst others, from the statement at page 41 of a former Indian Official that "the two agitators who had been deported had gone about the country tampering with the loyalty of the people and (in the case of Ajit Singh at least) with the loyalty of the troops." Neither then the evidence, nor the statements in Parliament, nor the deportation (for those statements do not assert that tampering with the loyalty of the sepoy was its ground) warrant as comment the libellous statement complained of. Indeed it has not been seriously contested that the actual statements in the article are not to be found in the debates on which it is alleged comment was made. It has, however, been contended, contrary to the statement of the law in Merivale v. Carson (1887) 20 Q.B.D. 275, 282 and Peter Walker & Son v. Hodgson [1909] 1 K.B. 239, that fair comment Is a branch of the law of privileged occasion and that "licentious" comment will pass, provided that there is no express malice. I am clearly of opinion, however, that this is not so. The law may shortly be stated to be that fair comment on a matter of public interest is no libel. But for a comment there must be a text which must be accurately stated. Comment must appear as comment, and must not be mixed up with the facts. If a person misstates any of the facts on which he comments, this misstatement, however bona fide, negatives the possibility of the comment being fair. A statement of fact as distinguished from comment is not protected. Then are the facts true? The statements being in themselves defamatory are presumed in law to be untrue until the contrary be shown. A great deal of discussion has taken place with reference to what occurred in the lower Court on the question of the withdrawal of the plea of justification. It is to be regretted that issues (which the Code directs

all Courts including the High Court to frame) were not settled, in which case probably there would have been less room for discussion. According to the Minute Book of 28th June 1909, Mr. Norton, who appeared for the defendants, stated as follows: "I withdraw paragraph 5 in so far as I will not attempt to prove my plea amounts to a plea of justification, I do not justify here." Apparently learned Counsel, in answer to an enquiry of the Court, desired to intimate that he would not call evidence to justify the statements complained of, but did not withdraw the plea in the sense that he admitted the defendants' statements to be false and thus abandoned his right to cross-examine the plaintiff with a view to show that the statements were justified, or to contend, when the evidence was all in, either that the statements were true and the comment was thus fair, or that there was such amount of truth in the charges made against the plaintiff as should go to the mitigation of damages. While this may have a bearing on the question as to how far facts which fall short of justification may affect a mitigation of damage, it is none the less the case that the defendants have not proved their allegation that the plaintiff did in fact tamper with the loyalty of the Punjab sepoy, and they have in consequence libelled the plaintiff. The defendants must, therefore, pay damages to him. He asked for half a lakh of rupees and has been awarded Rs. 15,000. At the outset, I desire to say that in my opinion the English cases which deal with the question of the revision of damages by the Court of Appeal have no application in this country where the Jury system, with respect to which the English decisions have been given, does not prevail. Here, the Court acts as both Judge and Jury, whether sitting as Court of first instance or appeal: though in appeal it will not, of course, in this or in any other matter, interfere, unless the decision appealed against appears to it to be clearly erroneous. It has been pressed upon us that we should not do so, because it is said the Court of first instance was better situated than ourselves to assess the damages. I am unable to discover any ground for this argument, which has application only in cases of appreciation of oral testimony. Before affirming this decision, we should be satisfied that the plaintiff has in fact suffered damages to the extent of Rs. 15,000 or some like sum. I am wholly unable to bring myself to this conclusion.

62. In the first place, the learned Judge has, in assessing the damages, proceeded as though no question arose as to the political character of the plaintiff who seeks damages in respect of the injury to such character. I say "such character," for assuming that the plaintiff was charged with an offence, that offence was of a political nature. Under Section 55 of the Evidence Act, the fact that a person's reputation is such as to affect the damages he should receive is relevant. In this country reputation includes both character and disposition. And disposition is obviously not the less proven, because it appears on the face of the facts deposed to by the plaintiff himself (including in the present case his deportation) or is a proper inference from these facts. I have already dealt both with such facts and inferences. Next, under the circumstances of this case, it appears to me to be highly probable that, assuming the political reputation of the plaintiff to have suffered damage, such damage is to be attributed in greater degree to the deportation of the plaintiff and the public and widely spread statements concerning the plaintiff made by the responsible executive Officers of Government than to the utterance of an anonymous and

irresponsible contributor to the defendants' journal. In any case it would be difficult in assessing damage to discriminate how much was due to these last-mentioned statements and how much was due to the more pronounced and more defamatory statement of the defendants. Further, the plaintiff himself states that he cannot say if he has suffered by reason of this libel. No doubt general damages need not be proved, but will be assumed on proof of the libel. This means that something, even though it be nominal damages, must be given on such proof. It does not mean that the plaintiff is to be given a very large sum of money without any regard to what the evidence discloses or fails to disclose. Here, with two exceptions to which I will next allude, that evidence fails to indicate any pecuniary, professional, or social loss in consequence of the alleged libel. The plaintiff says that it has been reported to him that "those people who mix with British officials and some Europeans now think worse of me since these publications;" and, secondly, "that the conservative Press showed that they disliked me more." It is not improbable that the plaintiff has attributed to the" irresponsible utterances of the defendants' correspondent--a result which should more properly be assigned to the action of Government in ordering his deportation, and to the accredited and responsible statements of its officials in justification of it. Notwithstanding, however, all this, it is quite possible, having regard to the fact that the plaintiff's definite charge was in its possible consequences more injurious than any previously made against him, and was asserted as a matter beyond doubt that the plaintiff has in fact suffered as a strict result of the libel more than the merely nominal damages which it has been suggested, in last resort, should be awarded. I concur, therefore, in the order which my learned brother proposes to make as to the disposal of this appeal. I wish, however, to add a word as to the costs. Not merely have the defendants rendered themselves liable to costs by reason of their failure to establish their contention that they had not libelled the plaintiff, and that the suit should inconsequence be dismissed, but they do not appear to me to be deserving of further relief in this matter over and above reduction of damages, having regard to the character of the previous articles which they published of the defendant and their conduct in respect of that in suit in publishing a statement which, on the face of it, purported to come from an unauthorised source without attempting previously to ascertain its truth and in failing subsequently to justify it.