[HIGH COURT OF AUSTRALIA.]

GODHARD . . . . . APPELLANT;
PLAINTIFF,

AND

JAMES INGLIS & Co. LTD. . . . . RESPONDENTS;
DEFENDANTS.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

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SYDNEY, *Nov.* 28, 29. *Dec.* 1.

Griffith C.J., Barton and O'Connor, JJ.

Defamation—Libel—Attack upon a class of persons—Action by a member of the class, unknown to the defendants—Intention of defendants to refer to the plaintiff—Misdirection—New trial.

The writer of matter defamatory of a class of persons, personally unknown to him, but so described that their identity is apparent to everybody who knows them and is familiar with the circumstances, is liable in an action for libel brought by any member of the class defamed.

The defendants published a defamatory article, directed against certain companies, known as coupon companies, and the persons responsible for their management, but making no direct reference to the plaintiff, who was the sole director and principal shareholder in one of the largest of these companies. At the trial the defendants' manager, the writer of the article, stated that the article was intended to be a criticism of the system followed by the companies, but admitted that it contained imputations against the owners or promoters, those who were carrying on the business. He went on to say that, when he wrote the article, he was not aware that the plaintiff was in any way associated with coupon companies, though he knew of the existence of the particular company to which the plaintiff belonged. The Judge directed the jury that the plaintiff must prove that the writer of the libel had the plaintiff in his mind when he wrote the article, and intended it to refer to the plaintiff, and that if the writer knew nothing of the plaintiff, and had no intention of applying the article to him, they must find for the defendants.

Held, that this was a misdirection, as it was immaterial in such a case, whether or not the defendant, when he published the libel, had in his mind the individuality of the plaintiff.

Bromage v. *Prosser* (1), distinguished.

LeFanu v. *Malcolmson* (2), considered and applied.

(1) 4 B. & C., 247. (2) 1 H.L.C., 637

Where there has been an erroneous direction which may have been the foundation of the jury's verdict, and it is impossible to say whether the verdict proceeded upon the erroneous direction, or upon the ground that, under all the circumstances, the libel was justified, there must be a new trial.

Semble, where the words of an alleged libel do not unambiguously refer to the plaintiff, the defendant may call witnesses to prove that they read the libel, and did not understand it to refer to the plaintiff.

Decision of the Supreme Court, (1904) 4 S.R. (N.S.W.), 327, reversed.

APPEAL from a decision of the Supreme Court of New South Wales (1).

This was an action for written defamation published in a trade newspaper or pamphlet. The appellant, who was plaintiff in the action, was the sole director and principal shareholder in a joint stock company, called the Co-operative Coupon Company, the business of which appears to have consisted of issuing to retail shopkeepers coupons for which they paid the company at the rate of twenty-five shillings per thousand. The retailer gave one coupon to the customer for every sixpence worth of goods bought, and the customer, when he had collected a certain number of coupons, took them to the premises of the Coupon Company, where they were exchanged for goods of the retail value of 2s. 6d. for each hundred coupons. There were several companies of the kind in New South Wales, besides that of which the appellant was the manager, and there were some differences in the ways in which the various companies carried on the business. The libel referred to those companies which carried on the business on the system followed by the Co-operative Company, which was apparently the principal company of the kind in the State.

The defendants were a firm of tea merchants, of which James Inglis, the writer of the libel, was the manager. The libel consisted of an article in the following words :—

"As long ago as September, 1901, Mr. Waddell, the treasurer, in reply to an influential deputation representative in the fullest sense of both the retail and wholesale grocery trade, and including leading men from Newcastle and other centres, promised faithfully to have a bill brought in within a few weeks to

(1) (1904) 4 S.R. (N.S.W.), 327.

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give relief to honest traders, and remove the pernicious incubus of the coupon system, as has been done in Victoria, Tasmania, and many other States in America and elsewhere. So far Government has done nothing. Now the evil is rapidly spreading. The coupon system is now encroaching on butchers' shops and other retail trades. No doubt it is an ingenious, clever system. It is so plausible, so specious, so lamblike, and so innocent, until the inevitable and inescapable pinching and squeezing begins. It appeals to the ineradicable love of a bargain, of getting something for nothing, which is so dear to the female mind. It is an absolute truth that the coupon manipulators, the crafty crew, be they Yank or Dago, Pagan, Philistine, Gentile or Jew, who pull the wires, make enormous profits. Now where do these profits come from? Who is responsible for them? Ask yourselves. Ponder facts. It is an incontrovertible fact that the storekeeper is a loser. We know of both butchers and grocers who pay from £30 to £40 monthly to the coupon task-master, and have nothing tangible to show for it in return. The values of the so-called free gifts or prizes are unspeakably incommensurate with the prices paid for coupons. The whole thing is one-sided, unjust, and an impudent tax on honest, struggling traders, and on gullible, complaisant people. Powerful vested interests are springing up around this unwholesome traffic. It is time traders as a body roused themselves, and, in spite of tiddley-winkin' commissions, subsidies for advertisement, or more open palm-greasing, insist on Parliament sweeping the evil out of existence."

The declaration alleged, by innuendo, that the libel referred to the plaintiff, and that it charged him with dishonest and disreputable practices, with obtaining money from retail traders by extortion and oppression, with tricking and deceiving persons who were entitled to receive goods from the Coupon Company, and with bribery and corruption. The defendant company pleaded not guilty.

At the trial before *Darley* C.J., a great number of witnesses gave evidence on both sides. The learned Chief Justice directed the jury that they ought to find for the defendants, if Inglis, at the time he wrote the alleged libel, had not the plaintiff in his mind, nor any intention of applying it to him. The jury found a verdict for the defendants.

The plaintiff then moved the Full Court consisting of *Darley* C.J., *Owen* J., and *Pring* J., for a rule *nisi* for a new trial on the following grounds: For misdirection in directing the jury as above stated: That His Honor refused to direct the jury that it was immaterial whether the defendants intended the article to refer to the plaintiff if in fact the article was capable of being understood, and was understood, to refer to the plaintiff. That His Honor admitted evidence for the defendants that the alleged libel was understood by persons who had read it not to refer to the plaintiff.

The Full Court refused to grant the rule (1).

The material parts of the defendant's evidence sufficiently appear from the judgment.

Wise K.C., and *Brissenden* (with them, *Want* K.C.), for the appellant. The direction of the Judge referred to in the first ground was erroneous, and a rule *nisi* should have been granted on that ground. The only material question for the jury was whether the libel was capable of referring to the plaintiff and was taken to refer to him. It was altogether immaterial that the writer of the libel did not know the plaintiff to be the manager of the company, or that he did not intend it to refer to the plaintiff personally. The libel was admittedly directed against certain coupon companies and those who were engaged in the management of them, and it therefore was defamatory of the class to which the plaintiff belonged. The libel imputed corruption and other practices, of which a corporation, as distinct from the individuals controlling it, is incapable, and therefore the persons who managed the company were the only persons to whom the libel could refer: *Mayor, &c., of Manchester* v. *Williams* (2). The jury were told that they could not find for the plaintiff unless he satisfied them that the writer of the libel had the plaintiff in his mind. There is no such onus on the plaintiff, except in cases where express malice has to be proved, and there was in the present case no necessity to prove that. The general principle is that damages must be paid for any injury to a legal right that is caused by an intentional act. So in libel, matter which is calculated to bring

(1) (1904) 4 S.R. (N.S.W.), 327. (2) (1891) 1 Q.B., 94.

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a man into hatred, ridicule, or contempt is actionable. It is no answer to say that the writer did not intend to do any injury, if the writing is taken by everybody who reads it to refer to the plaintiff.

It is a question for the jury whether the words have been reasonably taken to refer to the plaintiff. Words may be actionable though not intended to injure. Malice is implied from the doing of the wrongful act: *Bromage* v. *Prosser* (1); *Haire* v. *Wilson* (2); *Fisher* v. *Clement* (3). The words of the libel must be looked at, and the intention of the writer gathered from them: *Wakley* v. *Healey* (4); *Folkard on Libel and Slander*, 6th ed., p. 464; *American Encyclopædia of Law*, vol. 13, p. 385; *Capital and Counties Bank* v. *Henty* (5). Every person is presumed to intend the natural consequence of his acts. The natural consequence of this libel was to injure the plaintiff in the minds of those who knew him to belong to the class of persons attacked. *Le Fanu* v. *Malcolmson* (6), upon which *Darley* C.J., and the Full Court relied, is not in point. In that case the libel referred only to some persons of a particular class, and therefore it was necessary to establish by evidence that the plaintiffs, who belonged to that class, were amongst those referred to. That question could not arise here, because the writer of the libel admitted that he intended to attack the whole of the class to which the plaintiff belonged.

Evidence should not have been admitted that some persons who read the article did not understand it to refer to the plaintiff. It is not a contradiction of the evidence of the witnesses called to prove that they understood the article to refer to the plaintiff.

[O'CONNOR J.—No. But is it not material evidence on the question whether the plaintiff's witnesses should be believed on that point, and also as to the reasonableness of the inference which they drew from the words of the libel?]

No case is to be found in the reports in which such evidence has been given, nor do the text-book writers anywhere mention it as open to a defendant.

Pilcher K.C. and *Blacket* (with *Gannon*) for the respondents.

(1) 4 B. & C., 247.
(2) 9 B. & C., 643.
(3) 10 B. & C., 472.
(4) 7 C.B., 591.
(5) 7 App. Cas., 741.
(6) 1 H.L.C., 637.

If the Court is of opinion, considering all the evidence, that the case, if tried again, must have the same result, a new trial should not be granted.

[GRIFFITH C.J.—If the direction was wrong, there must be a new trial, unless we are satisfied that the direction was altogether immaterial, and could not have affected the jury's verdict.]

The article dealt with a matter of public interest, and, therefore may be justifiable as comment, even though unnecessarily severe. It was a criticism upon the system, and must inevitably reflect upon those who are responsible for the system. If it is fair comment, or *bonâ fide* opinion, those who suffer cannot complain : *Eastwood* v. *Holmes* (1) ; *Latimer* v. *Western Morning News Co.* (2). The defendants are entitled to assume that the jury found the question of fair comment in their favour.

[O'CONNOR J.—The difficulty is that we are not in a position to say whether they did so or not, because, in arriving at their verdict, they may have been influenced by the ruling that is objected to.]

The direction was not wrong, in view of the particular circumstances of the case. The libel, though capable of referring to the plaintiff, did not do so in terms, and therefore evidence of identity was necessary. To rebut the plaintiff's evidence, the defendant may give evidence that the plaintiff was not in fact intended, and that persons reading the article did not take it to refer to him. It is then a question for the jury, whether in fact the plaintiff was one of the persons against whom the attack was directed ; *Le Fanu* v. *Malcolmson* (3); *Lawrence* v. *Newberry* (4) ; *Odgers, Libel and Slander*, 3rd ed., p. 137.

[GRIFFITH C.J.—In *Le Fanu* v. *Malcolmson* the words were "some factories," but here it is clear that the words used refer generally to the persons who carry on the system. That being so, must not all such persons be the persons "intended ?"

O'CONNOR J.—Does not the article refer on the face of it to all these persons ?]

That was left to the jury, and they have found for the defendants. The whole summing up should be looked at, and, if the

(1) 1 F. & F., 347.
(2) 25 L.T., N.S., 44.
(3) 1 H.L.C., 637, at p. 664.
(4) 64 L.T., N.S., 797.

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general substance is a proper direction, it does not matter that an isolated passage may seem to inaccurately state the question for the jury: *Merivale* v. *Carson* (1). The Judge is not bound to give every direction that he is asked to give. In the present case he refused to give the direction asked for, because he had already properly directed the jury in the terms of the judgment in *Le Fanu* v. *Malcolmson* (2). The system was shown at the trial to be as bad as it was alleged to be in the libel, and there was no personal attack upon individuals, except in so far as they were part of the system attacked. The defendants have therefore justified their comment, and on that ground no reasonable jury could give more than nominal damages. A new trial should therefore be refused because a verdict for anything more than nominal damages would be set aside as excessive; *Vidal* v. *Temperley* (3), *Griffith* v. *Johnson and others* (4), *Tabart* v. *Tipper* (5), *South Hetton Coal Company* v. *North Eastern News Association Limited* (6). Even if the damages are not nominal they must be small, under £300, at any rate, and in such a case the plaintiff would not be entitled to appeal without special leave.

[GRIFFITH C.J. How can we say that the damages must be less than £300? We do not know what the jury thought of the defence of fair comment.]

Wise K.C. in reply, dealt with the evidence, and referred to *Latimer* v. *Western Morning News* (7). This is not a case for nominal damages. The verdict should be either for the defendant on the ground of fair comment, or for the plaintiff with substantial damages.

If the Court is of opinion that the direction was wrong, there must be a new trial: *Bray* v. *Ford* (8).

[O'CONNOR J. referred to *Prudential Assurance Co.* v. *Edmonds* (9).]

Cur. adv. vult.

(1) 20 Q.B.D., 275, at p. 281.
(2) 1 H.L.C., 637.
(3) 20 N.S.W., L.R., (L.) 223.
(4) 20 N.S.W., W.N. 40.
(5) 1 Camp., 350.
(6) (1894) 1 Q.B., 133.
(7) 25 L.T. (N.S.), 44.
(8) (1896) A.C., 44.
(9) 2 App. Cas., 487, at p. 507.

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1st December.

The judgment of the Court was delivered by

GRIFFITH C.J. This was an action for written defamation published in a trade newspaper or pamphlet.

[His Honor then stated the facts as set out above and proceeded :]

The plea of not guilty put in issue the questions whether the matter was defamatory, whether it applied to the plaintiff, and whether its publication was justifiable under the circumstances, as fair comment upon a matter of public interest.

As to the first question, whether the matter was defamatory, no question arises, but as to the third, that is, whether the publication was justified under the circumstances, a great deal of evidence was given, upon which, it was conceded by counsel, a verdict might have been given either way. But the difficulty that arises before us is as to the question whether the libel applied to the plaintiff or not, that is to say, whether it was published of and concerning him. Upon that it will be convenient first to refer briefly to the language of the libel itself. The article complained of is a criticism of the system upon which what are called coupon companies are managed. [His Honor then read the greater part of the article, which is set out above, and proceeded :]

Bearing in mind that this was a business carried on by a joint stock company, and that the business of such a company can only be carried on by individuals, it is clear that the article was capable of referring to the persons who were engaged in the business of carrying on this particular company. Even if there were any doubt whether it did as a matter of fact apply to those persons, it would be quite sufficient that it was capable of applying to them, because it would be for the jury to say whether it did refer to them, in the sense of being directed at the individuals who managed the business, as well as at the company under whose name the business was carried on. As to what the article was intended by the defendants to mean, no question can arise, because the defendant Inglis, in his own evidence, in cross-examination, admitted that he knew of the existence of the company; indeed that was not disputed. He said : " When I said 'tiddley-winkin' commissions I meant commissions unfair

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and not straightforward. By 'palm-greasing' I mean giving presents to persons to make them hold their tongues. I mean that the company itself was doing this, and its servants, employés, and others. I mean the same thing when I speak of the manipulators—the promoters of the business—those who were carrying it on." The defendant therefore says, what the jury might have inferred without his admission, that this article was intended to apply to the persons who carried on the business. That is a distinct admission by the manager of the defendant company, who says that he was the writer of the article. There can be no question therefore who were the persons to whom he intended to refer, that is to say, the owners or promoters of the business, those who were carrying it on. The matter was therefore, as the jury might have found, defamatory, and defamatory of the persons engaged in the business. The defendant Inglis went on to say that he did not know anything about the plaintiff being connected with the company, that his attack was upon the persons who carried on the business, but that he was not personally aware that the plaintiff was one of them. On that evidence, the defendants set up that they were not responsible to the plaintiff for the publication of the libel, that is to say, that it could not be said to have been published of and concerning the plaintiff, inasmuch as the writer had no knowledge that the plaintiff personally was one of the persons concerned in what he describes as a nefarious business. The learned Chief Justice purported to direct the jury in accordance with the decision in the case of *Le Fanu* v. *Malcolmson* (1), and he read to the jury portion of the judgment in that case as part of his summing up. According to His Honor's notes of what took place at the trial, the learned counsel for the plaintiff asked him to tell the jury that it was immaterial whether the defendant Inglis intended to refer to the plaintiff or not, if the article was in fact capable of being, and was, understood by persons reading it, to refer to him. "I refused," he says, "to do this, as I had directed the jury that the plaintiff must prove that the words were written and published by the defendant company of and concerning the plaintiff, and were intended by the defendants to apply to the plaintiff." In one sense that direction is, I think, quite

(1) 1 H.L.C., 637.

free from objection. It was contended before us by the learned counsel for the appellant that it does not matter who is the person to whom the writer of a defamatory article intends it to refer, provided that the words he uses are capable of referring to the plaintiff, and witnesses are called to prove that they understood them to refer to him. On that point he referred us to the case of *Bromage* v. *Prosser* (1) and other cases, but in those cases it was held that, it being conceded that the plaintiff was the person spoken of, the defendant could not say that he did not intend to defame him, or do him any injury, when he used the words complained of. But it does not by any means follow, when the question is, who is the person spoken of, that the defendant can say that he did not mean to refer to the plaintiff at all. During the argument I gave this illustration. A defendant publishes defamatory matter concerning a man A. B., which might or might not be justified. Some other person named A. B., or friends of his, mistakenly think that the publication refers to him, and he brings an action. As at present advised, I am disposed to think that an action would not lie. The apparent reference to the second A. B., would in that case be an accident. If a man is doing a lawful act in speaking of A. B., that is to say, publishes defamatory matter of him which he is justified in publishing, it would be a very strange thing if his act should become unlawful because one of his hearers or readers misunderstood his reference. The direction which the learned Judge was asked by counsel to give, was therefore erroneous, and the direction given to the jury "that the plaintiff must prove that the words were written of and concerning him, and were intended by the defendant company to apply to the plaintiff," is in one sense perfectly correct. If the person defamed in the article was not the plaintiff, the plaintiff cannot complain. But that applies only where the question is, was it the plaintiff or somebody else of whom the defamatory matter was published. For the purpose of that inquiry it may be conceded that the matter in question is defamatory, and that the question is, who was the person defamed, was it the plaintiff or somebody else ? For that purpose the identity of the plaintiff may be proved in the same way as in other cases, as for instance in criminal cases. But, though the words of the learned Judge's direction are in one sense perfectly

(1) 4 B. & C., 247.

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correct, it is clear, when the whole summing up is read, and is taken in conjunction with the circumstances of the case as disclosed in the evidence, that his words were not used in that sense, but in the sense that it was necessary, before the plaintiff would be entitled to a verdict, to prove that the writer of the article had the plaintiff personally in his mind, not merely as some unknown person who came within the category of manipulators, &c., but as an individual member of society, the man, Godhard. It is quite clear from the passages read to us from the summing up of the learned Judge, and it is not indeed disputed, that he stated, amongst other things, that the defendant must be shown to have had the plaintiff in his mind when he wrote the article, before the plaintiff could recover. He says: "If he had not him in his mind when he wrote it, . . . the question is whether he knew that the plaintiff was connected with the company . . . if you think Inglis says truly that he knew nothing of Godhard, and had no intention of applying it to him, you must find for the defendants . . . if you think that the defendant on the other hand, intended a personal attack upon Godhard, the latter is entitled to a verdict," and His Honor adds, "I directed the jury that the defendant must have had Godhard in his mind when he wrote the article." The question raised, therefore, is whether the writer of matter defamatory of persons who are unknown to him, but are so described in the article that their identity is apparent to everybody familiar with the circumstances, is entitled to go free. For that position the learned Chief Justice relied on the case of *Le Fanu* v. *Malcolmson* (1). That was an action for libel brought in Ireland. There were several counts in the declaration, of which the second count alleged a libel beginning thus: "No person, unless one who is perfectly acquainted with the workings of the Irish factories, can form the slightest idea of the cruelties and miseries to which the Irish factory hands are subject. I know some factories in this country, and the cruelty with which the operatives in them are used is really incredible." The plaintiffs, who were the owners of a factory in Ireland, alleged by innuendo that by the words "some factories" the defendants intended to refer to them. There were five counts, and the jury

(2) 1 H.L.C., 637.

gave a general verdict in favour of plaintiff, so that, if any count was bad, the whole verdict fell and error was brought on the ground that the second count was demurrable. The question that was argued before the House of Lords was whether the charge, that in some factories "the cruelty with which operatives were treated was incredible" could by *innuendo* be made to apply to the plaintiffs. A number of ancient cases and authorities were cited, in which defamatory words had been published that were ambiguous in their terms. For instance one was an action on the words "my enemy," and it was held that it could not be proved what was meant by "my enemy." In another case the words were "I know one near about J. S. that is a notorious thief," as to which it was held that it could not be established by *innuendo* who was referred to. In another case, in 1 Ro. Ab., 81, the words were "one of my brothers," in which it was said that no particular brother could bring an action. Whether these cases should now be treated as good law it is not material for us to consider, but the point raised was, as I have stated, that, the words "some factories" having been used, the plaintiffs, as owners of a factory, could not prove that theirs was one of the factories meant by that term. It was not disputed, or questioned in any way, that if the plaintiffs' factory was one of the class referred to, the plaintiffs, as the owners of the factory could maintain the action. It did not occur to the learned counsel in that case, in the course of a very lengthy and exhaustive argument, to raise any such point as that. The question before the House of Lords being what it was, the language used must of course be interpreted with reference to that question, and to the particular circumstances of the case. Lord *Cottenham*, L.C., in his judgment says (1): "The first proposition contended for is that this is a complaint of the publication of a libel which, although found by the jury as intended to apply to the plaintiffs is so framed that no *innuendo*, even after verdict, can support the declaration in which that complaint is made. Now the question is not whether the matter complained of is libellous, for about that no question can be raised." And again, "But the way in which the plaintiffs are referred to is expressed by the term 'some factories.' 'If the same tyranny is

(1) 1 H.L.C., 637, at p. 663.

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carried on in the *English* factories as in some of the *Irish* ones,' and a little further it goes on, 'No person unless one who is perfectly acquainted with the working of the *Irish* factories can form any, the slightest, idea of the cruelties and miseries to which the *Irish* factory hands are subject. I know some factories in this country; and the cruelty with which the operatives in them are used is really incredible. The cruelties of the slave trade or the Bastille are not equal to those practised in some of the Irish factories."

Now, pausing there, the question for the jury in the present case, if the opinion of Lord *Cottenham* is followed, would be, "Did the defendants in the defamatory publication allude to the plaintiff's company?" That was all the jury found in that case, or were asked to find; but in this case that matter is not in controversy at all, because the defendant Inglis admitted in his evidence that he did intend to refer to the plaintiff's company and its owners and managers. The Lord Chancellor then went on, after referring to the finding of the jury (1): "In that state the question arose below, and arises here, whether the judgment founded upon that verdict can be maintained on such a declaration; that is to say, where terms are used which must have reference to some one (for the term 'some of the *Irish* factories' must evidently apply to some *Irish* factories); and the *innuendo* is that the words do apply to the plaintiff's factory; and the jurors have found that that *innuendo* is true, and that the plaintiffs, who are the proprietors and owners of a factory in Ireland, were the persons meant. If a party can publish a libel so framed as to describe individuals, though not naming them, and not specifically describing them by any express form of words, but still so describing them that it is known who they are, as the jurors have found it to be here, and if those who must be acquainted with the circumstances connected with the party described may also come to the same conclusion, and may have no doubt that the writer of the libel intended to mean those individuals, it would be opening a very wide door to defamation, if parties suffering all the inconvenience of being libelled were not permitted to have that protection which the law

(1) 1 H.L.C., 637, at pp. 663-4.

affords. If they are so described that they are known to all their neighbours as being the parties alluded to, and if they are able to prove to the satisfaction of a jury that the party writing the libel did intend to allude to them, it would be unfortunate to find the law in a state which would prevent the party being protected against such libels." Again, after referring to the authorities, and, in particular to the case of *Solomon* v. *Lawson* (1), which had been referred to in the argument as containing the existing law on the subject, he says (2) "that being the only case in support of the argument, that the individual libelled must be expressly named, or unmistakably referred to, and, there being, I believe, a very general practice to the contrary, I cannot think the proposition is at all established, that under the circumstances of this case the *innuendo* found to be proved by the jury is not sufficient to entitle the party to the remedy he asks." Lord *Campbell* said (3): "The first objection which has been relied on by the counsel for the plaintiff in error, who certainly has argued the case with his usual ability, and has brought forward all the arguments that learning and talent could supply; the first objection is that this libel applies to a class of persons, and that therefore an individual cannot apply it to himself.

"Now, I am of opinion that this is contrary to all reason, and is not supported by any authority. It may well happen that the singular number is used; and where a class is described, it may very well be that the slander refers to a particular individual. That is a matter of which evidence is to be laid before the jury, and the jurors are to determine whether, when a class is referred to, the individual who complains that the slander applied to him, is, in point of fact, justified in making such complaint. That is clearly a reasonable principle, because whether a man is called by one name, or whether he is called by another, or whether he is described by a pretended description of a class to which he is known to belong, if those who look on, know well who is aimed at, the very same injury is inflicted, the very same thing is in fact done as would be done if his name and christian name were ten times repeated."

(1) 8 Q.B., 823.
(2) 1 H.L.C., 637, at p. 666.
(3) 1 H.L.C., 637, at p. 667.

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These are parts of the judgment from which the learned Chief Justice read a passage to the jury, but he appears to have interpreted it to mean that a person who publishes defamatory matter is not liable unless he has the individual plaintiff in his mind as the object of his attack. But the injury, as was pointed out by Lord *Campbell*, is done if a man is pointed out in such a way that any reader of the article may know who it is that is being attacked. The injury is done just as much as if he had been named, and the fact that the defendant does not know who is the person to whom his designation applies, can make no difference. A man who makes an attack upon an individual by a description which applies distinctly to that individual, is not entitled to excuse himself by saying: "I did not know that he was the man." Some businesses are carried on anonymously, and if a person carrying on such a business were attacked unwarrantably, it would surely be no excuse for the defendant to say, when sued, "I did not know the plaintiff, I never saw him before." To apply the language of Lord *Cottenham* again, "There being, I believe, a very general practice to the contrary, and common sense being entirely to the contrary," I cannot see that there is any necessity for the individual libelled to be expressly named in order to entitle him to the remedy he asks. It seems to us, therefore, in the present case, to be quite immaterial that no person is mentioned by name, since, if the person who has been defamed can be identified by the words used, in such a manner that nobody can have any doubt in fact that he is meant, an action will lie. Here there can be no doubt who are the persons meant. The defendants meant to attack those who carried on the business of the Coupon Company, of whom the plaintiff was the chief. How then can it be material whether the writer knew his name, or had him personally in his mind? The point seems to have been altogether irrelevant, and, as it is possible that the verdict of the jury went on that ground, we are, we think, bound to grant a new trial. It may be that the verdict went on the ground that the publication of the libel was justifiable under all the circumstances, but it is impossible for us to say whether that was so or not. Where there has been an erroneous direction, which may have been the foundation of the verdict, there is no alternative but to grant a new trial.

For these reasons, we think that the appeal should be allowed and a new trial granted.

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Appeal allowed with costs. Rule absolute for a new trial with costs. Costs of the first trial to abide the event.

Solicitors, for appellant, *R. W. Thompson & Ash.*
Solicitors, for respondents, *Parish & Ebsworth.*

C. A. W.

[HIGH COURT OF AUSTRALIA.]

Ex parte MATTHEWS.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1904.

SYDNEY, *March* 17.

Griffith C.J., Barton and O'Connor JJ.

Jurisdiction of High Court to entertain appeals from decisions of Supreme Courts pronounced before establishment of Commonwealth.

The High Court has no jurisdiction to entertain an appeal from a decision of the Supreme Court of a State pronounced before the establishment of the Commonwealth.

MOTION for special leave to appeal from a decision of the Supreme Court of New South Wales pronounced on 27th May, 1887.

Per Curiam. The High Court has no jurisdiction to entertain appeals from decisions of the Supreme Courts pronounced before the establishment of the Commonwealth.

Application dismissed.

C. A. W.