

IN THE HIGH COURT OF AUSTRALIA

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AUSTRALIAN CONSOLIDATED PRESS  
PTY. LIMITED

V.

BRIDGES

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REASONS FOR JUDGMENT

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Oral

Judgment delivered at Sydney

Wednesday 28th July 1971

AUSTRALIAN CONSOLIDATED PRESS  
PTY. LIMITED

v.

BARRY JOHN BRIDGES

ORDER

Appeal dismissed with costs.

AUSTRALIAN CONSOLIDATED PRESS  
PTY. LIMITED

v.

BARRY JOHN BRIDGES

JUDGMENT  
(ORAL)

BARWICK C.J.

AUSTRALIAN CONSOLIDATED PRESS  
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The Court has had the opportunity to consider this matter.

A jury of twelve, in an action in the Supreme Court of New South Wales brought by the respondent against the appellant for defamation, returned a verdict for the respondent for \$20,000. An appeal to the Court of Appeal Division by the appellant was dismissed.

The appellant has pursued before this Court, with one omission, the same grounds of appeal as those it placed before the Supreme Court. The article found to be defamatory, the innuendoes it was conceded to be capable of bearing and the various grounds of appeal are sufficiently recited in the reasons for judgment given by Mr. Justice Mason in dismissing the appeal to the Supreme Court. Mr. Justice Jacobs and Mr. Justice Moffitt agreed with those reasons. Consequently I have no need to repeat

any of that material.

We have heard a comprehensive argument by senior counsel for the appellant covering the various grounds of appeal; but having considered all that has been said and the authorities to which we have been referred I am not persuaded that the Supreme Court was in error in any of the conclusions which Mr. Justice Mason expressed. Further, with the qualifications I will mention, I would be prepared to dismiss this appeal for the reasons given by Mr. Justice Mason for those conclusions.

However, in my opinion the proper answer to the submission that the trial Judge was in error in not excluding from the consideration of the jury as capable of a defamatory meaning the last three paragraphs in the article is that his Honour was bound to leave the whole article for the jury's opinion whether it carried one or more of the innuendoes of which it was capable. The article as a whole was the subject of complaint and, whilst it was proper to tell the jury that it was defamation of the plaintiff and not of the Labor Party with which they were concerned, the whole of the article was for their consideration as to whether or not it was defamatory. It is an error, in my opinion, to attempt to isolate portions of an article sued upon as a whole into segments some of which, if standing alone, might not be capable of bearing a defamatory meaning. Questions as to how much of a document can or must be pleaded as defamatory do not arise at all in this connection. I should add

however that I do not disagree with the Supreme Court that, even on the footing the article could properly be segmented, the last three paragraphs were properly included in the matter left to the jury as capable of a defamatory meaning.

The other matter with respect to which I would wish to qualify the reasons given by Mr. Justice Mason concerns the appellant's claim that the damages were excessive. In dealing with that submission Mr. Justice Mason put on the one hand a number of matters tending to minimise damages and on the other hand circumstances to which the jury might have had regard and which might tend to justify the award of damages which they made. His Honour said, and I quote from the third volume of the transcript at page 25:

"No less important are the countervailing considerations namely, that the imputations left to the jury, or some of them were of a serious character; they were published in a newspaper with a very large circulation and the appellant's defence of justification was rejected by the jury".

It was submitted for the appellant that by this last expression his Honour meant that the jury could have assessed an amount of damages beyond an amount appropriate to the actual injury suffered by the respondent because of the appellant's conduct in pleading and seeking without success to establish the truth of the defamation and that the publication of the article was for the public benefit. But I do not so read the expression I have quoted from his Honour's reasons for judgment. There was nothing in the summing up to suggest that the defence of justification

was not made bona fide and I have no reason here to consider how far the pleading and its evidentiary support could have been regarded by the jury in the assessment of damages. In my opinion his Honour meant by his reference to the failure of the defence of justification, conceding as I would the ambiguity of his expression, that included in the matters which the jury could consider in awarding damages was their own finding on the issue of justification. In my opinion they were clearly entitled so to do. The submission to the contrary ought, in my opinion, to be rejected. The appellant had tendered an issue that the article in its defamatory sense was true and its publication for the public benefit. After verdict for the plaintiff that view of the result of the issues fought most favourable to the support of the verdict must be taken. That means that it may be taken that the jury negatived the proposition that the article in its defamatory sense was true. The jury were entitled, in my opinion, in approaching the question of damages to have in mind their finding as to that issue of the truth of the defamation.

Consequently, so reading his Honour's reasons, I agree with them. I should add that in any case there was evidence led for the plaintiff capable of acceptance by the jury which tended to show the falsity of the article in its defamatory sense in important respects. No doubt the verdict was high, as the Supreme Court observed, but in my opinion that court was not in error in deciding that it was not unreasonably high in the circumstances so as to call for that court's intervention; the defamation was serious and

the publication very wide-spread. The amount of the verdict must, of course, be related to all the circumstances, bearing in mind the considerable scope for difference of opinion as to the proper compensation for defamation. Each case no doubt stands on its own circumstances when a verdict is challenged as excessive: and each, particularly in defamation, is incomparable with any other. I would dismiss the appeal.



AUSTRALIAN CONSOLIDATED PRESS PTY. LIMITED

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JUDGMENT  
(ORAL)

McTIERNAN J.

AUSTRALIAN CONSOLIDATED PRESS PTY. LIMITED

v.

BRIDGES

I agree with the Chief Justice.

AUSTRALIAN CONSOLIDATED PRESS PTY. LIMITED

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JUDGMENT  
(ORAL)

MENZIES J.

AUSTRALIAN CONSOLIDATED PRESS PTY. LIMITED

v.

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I am of the same opinion.

AUSTRALIAN CONSOLIDATED PRESS LIMITED

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JUDGMENT  
(ORAL)

WINDEYER J.

AUSTRALIAN CONSOLIDATED PRESS LIMITED

v.

BRIDGES

I agree.

AUSTRALIAN CONSOLIDATED PRESS LIMITED

v.

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JUDGMENT  
(ORAL)

OWEN J.

AUSTRALIAN CONSOLIDATED PRESS LIMITED

v.

BRIDGES

I agree.