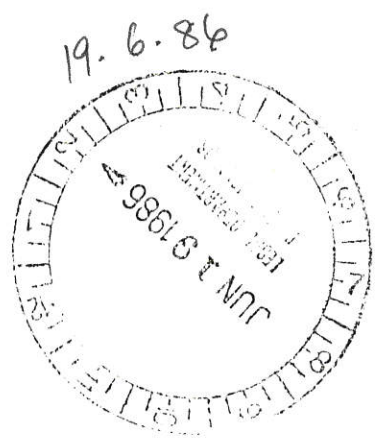


IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
BEFORE THE HON. CHIEF JUSTICE, SIR JOHN SUMMERFIELD
C.B.E., Q.C.



ON 21st, 22nd, 23rd, 29th, and 31st October, 1st November 1985
24th, 25th, 26th, 27th and 28th February, 3rd and 4th March 1986.

CAUSE NO. 406 OF 1983

| | | |
|---------|------------------------|------------------|
| BETWEEN | JAMES M. BODDEN | FIRST PLAINTIFF |
| | and | |
| | TRUMAN BODDEN | SECOND PLAINTIFF |
| | and | |
| | HAIG BODDEN | THIRD PLAINTIFF |
| | and | |
| | JOHN McLEAN | FOURTH PLAINTIFF |
| AND | McKEEVA BUSH | FIRST DEFENDANT |
| | and | |
| | BRIAN UZELL | SECOND DEFENDANT |
| | and | |
| | CAYMAN FREE PRESS LTD. | THIRD DEFENDANT |

Mr. Ramon Alberga Q.C. (with him Mr. Rodger) for plaintiffs

Mr. Norman Hill Q.C. (with him Mr. Shea) for first defendant.

J U D G M E N T

This is an action by the four plaintiffs against the first defendant (who will be referred to as the defendant) for damages for libel and for incidental relief. The action between the plaintiffs and the other two defendants was settled out of court.

It is not in dispute that the defendant is the author of the article entitled "Press freedom is a must" (Ex.1) which appeared on page 4 of the Cayman Compass issued on Wednesday 27th July 1983. The article appeared in that issue of the Cayman Compass at the instance of the defendant. It is that article that the plaintiffs claim libels them. It will hereafter be

referred to as the article. It reads as follows:

"Press freedom is a must
by McKeeva Bush

1. It is very distressing to see the attack on the press in this country by a member of government, the Hon. Haig Bodden. This is not the first time an attack on or an attempt was made to control the press, and I suspect it will not be the last, as long as Mr. Haig and his colleagues are the elected government of this country.
2. I abhor and will work against any move on the part of government to do as Mr. Haig suggest. I regard it as controlling the press just⁹ the Manley's, the Castro's, The Forbes Burnham's, the Maurice Bishop's, the Papa Doc's, and the Sandinistas do, and have long regarded Mr. Haig and his colleagues as being of the same mentality.
3. However, there is no place in this country for people in such a state of mind. These dictators, are all avowed Socialist, and most people, (and I do) regard Socialism as next to Communism. Mr. Haig and his colleagues started on the road to Socialism the day they started nationalizing, and now expresses his opinion to go even further. A very dangerous move!
4. Now, I know I have been regarded as a "prophet of doom", but the "doom" I have been predicting has arrived. Its full force has not yet struck, but like a hurricane, the rains have started, and the winds have begun to howl...but the real devastation is yet to come if Mr. Haig and his colleagues do not now change course!
5. Why do Mr. Haig and his colleagues persist to castigate the press? they simply do not want any kind of opposition, and no opinions but those of their own, and their kind aired. But is this right? This country is facing all sorts of problems, murder, dope, rape, burglary, financial racketeering, all sorts of crime, in an unprecedented rise we Caymanians have never known. The press in this country has a duty to print the news and to tell the truth, and to tell it fearlessly regardless of who it is about, or who it might nettle. It should allow no man, or no government to deter, or to intimidate them from performing this duty. Mr. Haig must remember, that all human action should aim at creating, maintaining, and increasing the ability of the greatest number of people, the right to think and act for themselves. Actions are right when they do that. Wrong, when they do not!
6. Mr. Haig should think of this and bear it in mind. What a world it would be, if all mankind minus one, were of one opinion, and only one person were of the contrary opinion. Mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind. But the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race: posterity as well as the existing generation: those who differ from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: If wrong they lose what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error!
7. John Stuart Mill said in his book "Liberty", "the time, it is to be hoped, is gone by, when any defense would be necessary of the "liberty of the press" as one of the

- corrupt
- " securities against/of tyrannical government. No argument, we may suppose, can now be needed, against permitting a legislature or an executive, not identified in interest with the people, to prescribe opinions to them, and determine what arguments they shall be allowed to hear." This was said in 1859. It still holds true, and in this world today it even more so, needs to be stamped in our minds!
8. I state the suggestion of Mr. Haig if carried out, would be undemocratic. For this and other reasons I can only regard the regime he is a part of, as yet one more of the universal attacks on democracy that are taking place all over the world continuously, unremittingly, relentlessly.
 9. Until relatively recently, Mr. Haig and his colleagues' antidemocratic activities were all the more effective because they were stealthy and insidious rather than frontal and challenging. These days, perhaps because of a sense of urgency, they have tended to become more obvious and impatient. The urgency may be due to his realization that the Caymanian people have had enough of their mismanagement and of irresponsible government.
 10. Without a free press, Mr. Haig and his colleagues know they can continue. However, I believe there is yet a spirit of resistance in this country which will not submit to be oppressed, and I am sure there is a supply of good sense in this country, which cannot be deceived. The liberty of the press is the safeguard of all the civil, political, and religious rights of the people. We owe it to our ancestors to preserve entirely those rights, which they have delivered to our care: We owe it to our posterity not to suffer their dearest inheritance to be destroyed.
 11. George Mason in the Virginia Bill of Rights (1776) said: "The freedom of the press is one of the greatest bulwarks of liberty and can never be restrained but by despotic governments." Caymanians must take this as a warning, because the suggestion of Mr. Haig to control the press is a move to have and exercise complete political power and control in this country. Then democracy would be kicked out of the door. and we would be on the road to absolute communism. Is this what the Caymanian people desire? The answer must be an emphatic no! Freedom of the press is a must if democracy is to continue in this country. Let it be so, both now and forever more, in our Beloved Isle Cayman!".

I have taken the opportunity of numbering the paragraphs for ease of reference at a later stage.

At the relevant time each of the plaintiffs was an elected member of the Legislative Assembly and an elected member of the Executive Council. Only the fourth plaintiff was in his first term in that capacity. Executive Council as a whole, i.e. including the official members, functions in accordance with the principles of collective responsibility. The

expression, the "elected government" is widely used to refer to the elected members of Executive Council. The "elected Government" is so small a class in these Islands, and so easily ascertainable as a class, that what is said of the class is necessarily said of each member of that class. A reference to the colleagues of a named elected member of Executive Council would necessarily mean a reference to the other three elected members on that body. This is conceded. It follows that where any expression such as "Mr. Haig and his colleagues" is used that is a reference to all four plaintiffs. In other cases the reference is to the third plaintiff only.

All the plaintiffs are well known in their capacity as elected members of the Legislative Assembly and Executive Council. They are well known not only in the electoral districts they represent but in the whole country. Their activities in the political field and in the field of public duties regularly receive wide coverage in the local press and on the radio station.

My approach, in the first place, must be to decide whether as a matter of law any of the passages in the article, or the article as a whole, is capable of bearing a defamatory meaning.

If any passage, or the article as a whole, is so capable I must decide whether it is in fact defamatory of one or more of the plaintiffs. That is a question of fact.

The main issues are, first, whether any passage, or the article as a whole, was defamatory and, in particular, whether it bore, or was understood to bear or was capable of bearing any of the meanings set out in paragraph 12 of the statement of claim. If any passage, or the article as a whole, is defamatory of any one or more of the plaintiffs it must be determined whether it was fair comment made in good faith and without malice upon a matter of public interest. It is not in dispute that the matter which is at the heart of the article, namely freedom of the press and its control (as reflected in the title of the article), is a matter of public interest.

Justification has not been pleaded.

For the plaintiffs, it is contended that the defence of fair comment has no application to this case at all.

And so it is as well to come to grips with two matters straight away.

The first is whether the third plaintiff, when addressing a public meeting at the town hall at Breakers on Thursday 14th July 1983, told his audience that it might be necessary in the future for practising journalists to sit an examination or be licensed before they can operate in Cayman. A report to that effect appeared in the Cayman Compass of Tuesday 19th July 1983 and the Cayman Pilot of 22nd July 1983. It was that remark attributed to the third plaintiff that sparked off the article.

The third plaintiff claims that the reports were inaccurate and that he did not say what was attributed to him by these newspapers. He readily admits speaking about other matters relating to the press. The first plaintiff who attended the same meeting did not hear the statement attributed to the 3rd plaintiff. Both said that there were no known reporters at the meeting. On the other hand Mr. James Lawrence was adamant that at the meeting at Breakers, and at the meeting the day before at Bodden Town, he heard the third plaintiff say that we (presumably meaning this country) should adopt the policy suggested by U.N.E.S.C.O. of licensing journalists. He said he heard the third plaintiff say this also at another meeting at Newlands.

One must make allowance for faulty recollection when trying to recall events over two years earlier. There is also room for ex post facto reconstruction without any deliberate intent to mislead. Further it is easy enough to confuse one meeting with another.

The first plaintiff readily admitted that he was late for the meeting at Breakers. It is possible that his mind was on other matters at the material time.

Mr. Lawrence gave what I considered a plausible reason for not reporting this statement in his otherwise fairly accurate and detailed report of the meeting at Bodden Town. From where he claims to have heard what was said at Breakers it is unlikely that he would have been seen by either the first or the third plaintiff.

I am satisfied that Mr. Lawrence is telling the truth about what he heard at these meetings. It is significant that his version is confined to the licensing of journalists. He does not mention examinations as in the press reports. That suggests that there has been no rehearsal based on knowledge of the press reports. As one would expect, it is the more controversial aspect, the licensing, which has stuck in his mind. I am satisfied that he is not inventing this piece of evidence.

In reaching my conclusion I have not treated the press reports, Ex.3 and Ex. 21, as evidence of what was said at the Breakers meeting. They are not. Indeed, one does not even have any knowledge of the source for these reports. One report may have been the source for the other. I am basing my conclusion on the credibility of Mr. Lawrence as a witness. I must also take account of the fact that the third plaintiff admits having seen Ex. 3 around about the time of its issue but took no steps to counter or contradict what had been attributed to him. While the reason he gave for this is not unreasonable, the remarks attributed to him must have appeared to him (and to his colleagues who must have received information about them) to be, at the very least, controversial. Yet the only response was acquiescence.

My finding of fact, therefore, is that at the Breakers meeting the third plaintiff did state that journalists here were not qualified and that he believed that we (meaning this country) should adopt the policy suggested by U.N.E.S.C.O. of licensing journalists or used words to like effect. The press reports were not quite in those words, but they reported the substance. It is not possible to hold, on the evidence that the third plaintiff said anything about examinations for journalists, but the more important aspect concerns the licensing of journalists and one can examine any comment in relation to that aspect.

The second matter can be summed up thus: To rely on the defence of fair comment, is it necessary to recite the facts on which the comment is based? In the article there is no recital of the statement attributed to

the third plaintiff concerning the examination or licensing of journalists.

In my view, it is not imperative that the article or other publication etc. commenting on a fact should recite that fact as the anchor for the comment that is made about it. There is great merit in doing so and it may often be safer to do so. However, I think that it is sufficient if the publication adequately identifies the fact on which comment is offered so that the reader and author are clearly ad idem as to what fact the comment refers to. If the fact is of sufficient notoriety that there can be no doubt about what is in the mind of the commentator, the fact being commented on being equally easily identified by the reader, it may be clear from the context of the publication what the comment relates to without much or any introductory lead. For example, if the throne speech announced a crippling income tax, a leader in a local newspaper could say: "Phew! We cannot believe that the elected Government could be so mad as to destroy the economy of these Islands like this!" Everyone would know what the leader was referring to and everyone would realise that the comments in it related to that proposal, although not specifically mentioned.

In stating this proposition I have not lost sight of the case in this court, *James M. Bodden & Ors v James A. Lawrence and Anor* (Causes Nos. 256/7/8/9 of 1979). I think, on reflection, that the generalisation in that case on the necessity for a substratum of fact to appear in the publication as a basis for comment probably went too far. However, the facts of that case were very different and it did not turn on matters of notoriety forming the basis for comment.

It is apparent from the article (particularly the title, the references to attacking the press and controlling it) that it was dealing with the reports in which the third plaintiff was reported as having attacked the press and advanced his view about licensing journalists. (Mr. Lawrence said in evidence that the third plaintiff castigated the press). That would have been a sufficiently controversial proposal to have stuck in the minds of most readers of the press, including readers

of that newspaper in which the article appeared. It was that newspaper which first reported the "attack" and proposal attributed to the third defendant a little more than a week earlier (Ex.21). In my view, most readers would have had that news item in their minds when reading the article, particularly those who also read the Cayman Pilot report (Ex.3) ^{who} or had been at any of the three political meetings.

However, it should be stressed that it must be obvious to the reader of an article or other publication what fact the author has in mind and is commenting on. Whether that fact is of such notoriety that it needs little or no lead in to bring the readers' minds to bear on it as the basis for comment or whether it is recited accurately in the article or other publication to focus attention on it as the basis for comment is of little consequence. There must be a meeting of the minds of author and reader as to what fact the comment relates. Otherwise the expression of opinion depends on nothing but the author's own authority. It amounts simply to a statement of fact. It cannot be protected by a plea of fair comment.

The only fact which could possibly ^{have been} / in the mind of any reader of the article, being a fact forming the basis for any comment, was the statement relating to journalists as attributed to the ^{third plaintiff} / in the Cayman Compass (Ex.21) and the Cayman Pilot (Ex.3) or which the reader may have heard himself at one of the three meetings. From the title of the article and its general tenor (apart from one or two digressions) it is plain that it is not concerned with any matter other than the "attack" on the press by the third plaintiff and his proposal as reported. It certainly makes no reference to any other fact which could form the basis of comment in the article. There was no other fact of contemporary notoriety on which a reader could focus as the basis for comment in the article. There could be no other fact in the mind of the reader which he could recognise as being the basis of comment in the article.

That means that the defendant cannot rely on any of the matters specified in paragraphs (b) to (g), inclusive, of the "particulars of facts

and matters on which the comment was based" in the defence. Apart from the extensive period of time that had elapsed since ^{the} events related occurred, no reader, from the context of the article, could have had in mind any of those facts or could have thought that the author had them in mind and was commenting on them. And the same applies to all other material that has been introduced in evidence outside the scope of paragraphs (a) to (g) of those particulars, such ^{as} ^{the} reports of debates in Legislative Assembly and letters to the press and releases such as Ex. 2 and Ex. 4. It seems plain to me that much of that additional material was the product of hind sight. No reader could possibly be said to have had his mind adverted to those matters or any of them as the object of comment by the article. It is clear from the opening paragraph and the article as a whole that the author has in mind, and is dealing with, remarks by the third plaintiff in relation to the press - and nothing else. In this connection it will be useful to quote daCosta C.J. in the Bahamian case, Emmanuel E. Osadebay v Norman Solomon and Ors. (No. 803 of 1979). At p7 he says:

"Again, the comment must be an expression of an opinion and not an assertion of fact and the critic should always be at pains to keep his facts and his comments upon them severable from one another. For if it is not reasonably clear that the matter purported to be fair comment is such, he cannot plead fair comment as a defence. The facts themselves must be truly stated as Fletcher Moulton, L.J. observed in *Hunt v. Star Newspaper Co.* (1908 - 1910) All E. R. Reprint 513 at p. 517:

"In the next place, in order to give room for the plea of fair comment, the facts must be truly stated. If the facts upon which the comment purports to be made do not exist the foundation of the plea fails. This has been so frequently laid down authoritatively that I do not need to dwell further upon it: see, for instance, the direction given by Kennedy, J., to the jury in *Joynt v Cycle Trade Publishing Co.* (1) (1904) 2 K.B. at p. 294), which has been frequently approved of by the courts. Finally, comment must not convey imputations of an evil sort except so far as the facts truly stated warrant the imputation."

It is not however necessary that all the facts upon which comment is based should themselves be stated in the alleged libel. "The question is whether there is a sufficient substratum of fact stated or indicated in the words which are the subject-matter of the action and whether the facts or subject-matter on which comment is made are indicated with sufficient clarity to justify comment being made. The substratum of facts or subject-matter may be indicated impliedly in the circumstances of the publication". (See *Kemsley v. Foot* (1952) A.C., 345 at pp. 356, 357 per Lord Porter)."

Further authority may be found in *London Artist v Littler* 1969 (2)

This is a convenient point to make two other critical findings, one of law and the other of fact. The first is that passages in the article are capable as a matter of law of bearing a defamatory meaning. The second is that those passages are in fact defamatory of each of the plaintiffs as hereinafter specified. The relevant passages will be adverted to at a later stage.

One must, therefore, turn to and examine the defence of fair comment in relation to each of the plaintiffs. An important consideration in that regard is to keep in mind that it is plain from the evidence that the third plaintiff was expressing a personal view when he made his remarks about journalists. Although members of Executive Council observe the principles of collective responsibility there is nothing to suggest that the views expressed represented a collective decision or that of the Executive Council. The third plaintiff was speaking in his capacity as a member of the Legislative Assembly addressing his constituents on matters of public interest generally. There is no principle that provides that the views on matters of public interest expressed by one member of Executive Council represent the views of any other member of Executive Council or is attributable to any such other member unless, of course, it is apparent that the member concerned is explaining Government policy determined by Executive Council.

In considering this defence, the principles to take into account are conveniently set out in *Gatley on Libel and Slander*. The extracts that follow are taken from the 7th edition as the presentation and grouping in that edition are more suited to the present matter than the presentation and grouping in the 8th edition. Those principles are:

"702. Fair comment distinguished from justification. The defence of fair comment must be distinguished from that of justification. Under the latter (subject now to the provisions of section 5 of the Defamation Act 1952) the defendant must prove the truth of every defamatory fact alleged and every injurious imputation made. Under the former (subject now to the provisions of section 6 of the Defamation Act 1952), the defendant must prove that the facts on which the comment is founded are true and that the comment on these facts is "fair."

705. Definition. A comment is a statement of opinion on facts. "A libellous statement of fact is not a comment or criticism on any thing." It is a comment to say that a certain act which a man has done is disgraceful or dishonourable; it is an allegation of fact to say that he

"did the act so criticised.

709. Words must be read in their context. But words which, taken by themselves, would appear to be a positive allegation of fact, may be shown by the context to be a mere expression of opinion or argumentative inference. To write of a man that he is "a disgrace to human nature" is a defamatory allegation of fact. But if the words were, "He murdered his father, and therefore is a disgrace to human nature," the latter words appear from the context to be merely comment. So the context may show that the defendant, in alleging that a public man has been guilty of some disgraceful or dishonourable conduct, or has been actuated by corrupt or dishonourable motives, bases such allegations on facts which he truly states or clearly refers to. In such a case his allegations, if fairly warranted by these facts, may be defended as comment on, or reasonable inference from, such facts. It is for the jury, subject to the direction of the judge, to decide whether in the particular case the defendant's allegations are allegations of fact or expressions of opinion, and, if expressions of opinion, whether such expressions of opinion are fairly warranted by the facts truly stated or referred to.

Where the jury found that the words complained of were defamatory and untrue, and yet were fair comment, it was held that the findings were not inconsistent, in that the first finding proceeded on the hypothesis that the words were, or might be, statements of fact, and this hypothesis was then negatived in the second; the defence of fair comment was accordingly upheld.

710. Dicta on the above paragraph. "Comment may sometimes consist in the statement of a fact, and may be held to be comment if the fact so stated appears to be a deduction or conclusion come to by the speaker from other facts stated or referred to by him, or in the common knowledge of the person speaking and those to whom the words are addressed, and from which his conclusion can be reasonably inferred....If, although stated as a fact, it is preceded or accompanied by such other facts, and it can be reasonably based upon them, the words may be reasonably regarded as comment, and comment only, and if honest and fair, excusable; and whether it is to be regarded as a fact or comment it is a question for the jury, to be determined by them upon all the circumstances of the case."

"An inference or comment may take the form of a statement of fact. The question is not whether the words which the defendant used stated a fact or not, but whether, reading them in the environment, the impression conveyed to the audience was that the defendant was merely making a bald statement that the defeated men were criminals, or that that was an inference which the speaker thought should be drawn from certain facts which he mentioned or referred to. If the former is the true view, then, no doubt, in the absence of justification, the plaintiff must succeed. If the latter, then, assuming that the facts on which the inference is based are true, and the inference itself is just and fair, he must fail."

"The plea is that the words are fair comment made in good faith and without malice upon a matter of public interest. Under a plea of that character the defendant is entitled to show and indeed he must show what the facts were upon which he commented, that they are facts, that the matter is one of public interest, that the comment is fair and that the comment was made in good faith and without malice."

"711. Allegation must be recognisable as comment, not fact. But in order that an allegation prima facie defamatory may be defended as fair comment the allegation must be recognisable by the ordinary reasonable man as comment and not as a statement of fact. If the defendant alleges that a public man has been guilty of disgraceful conduct, or has been actuated by corrupt or dishonourable motives, and does not state what those disgraceful acts are, or assign any grounds from which such motives can reasonably be inferred, his allegations are allegations of fact, and not expressions of opinion, and he cannot therefore rely on the defence of fair comment. If a statement in words of fact stands by itself naked, without reference, either expressed or understood, to other antecedent or surrounding circumstances notorious to the speaker and to those to whom the words were addressed, there would be little, if any, room for inference that it was understood otherwise than as a bare statement of fact, and then if untrue there would be no answer to the action." "If the facts be correctly stated the reader is in a position to form his own conclusions."

712. In *Kemsley v. Foot* on an interlocutory application to strike out a plea of fair comment on the ground that no or no sufficient statement of the facts on which the comment was made appeared in the article complained of, Lord Porter stated that "the question in all cases is whether there is sufficient substratum of fact stated or indicated in the words which are the subject-matter of the action." But "if a writer chooses to publish an expression of opinion which has no relation by way of criticism, to any fact before the reader, then such an expression of opinion depends upon nothing but the writer's own authority, and stands in the same position as an allegation of fact. It cannot be protected by a plea of fair comment." "To state accurately what a man has done, and then to say that [in your opinion] such a conduct is dishonourable or disgraceful, is comment which may do no harm, as everyone can judge for himself whether the opinion expressed is well founded or not. Misdescription of conduct, on the other hand, only leads to one conclusion detrimental to the person whose conduct is misdescribed, and leaves the reader no opportunity for judging for himself of the character of the conduct condemned, nothing but a false picture being presented for judgment."

714. Comments distinguished from facts. It is thus clear that a critic should never mix up his comments with the facts on which they are based. Ideally, he should set out his facts first, and so separate them from his comments that the reader can readily distinguish the two and judge the value of the criticism. If the two are so entangled that inference is not clearly distinguishable from fact, then those to whom the statement is published may regard it as founded upon unrevealed information in the possession of the publisher, and it may stand in the same position as any ordinary allegation of fact.

715. Dicta in *Hunt v. Star*. "If," said Fletcher Moulton L.J. in *Hunt v. Star*, "the facts are stated separately and the comment appears as an inference drawn from those facts, any injustice that it might do will be to some extent negated by the reader seeing the grounds upon which the unfavourable inference is based. But if fact and comment be intermingled so that it is not reasonably clear what portion purports to

"be inference, he will naturally suppose that the injurious statements are based on adequate grounds known to the writer, though not necessarily set out by him. In the one case the insufficiency of the facts to support the inference will lead fair-minded men to reject the inference. In the other case it merely points to the existence of extrinsic facts which the writer considers to warrant the language he uses."

On the application of some of those principles I can do no better than return to the judgment of da Costa C.J. in Emmanuel E. Osadebay v Norman Solomon and Ors. That judgment reviewed the authorities that bear on what I have to decide.

At page 2 daCosta C.J. said:

"This is a relatively simple but important case. It is important because we are here concerned with the exercise of one of the fundamental freedoms - freedom of expression - which is now enshrined in Article 23 of the Constitution of the Commonwealth of The Bahamas. It embraces the right to discuss and criticize the utterances and conduct of men in public life. But, as the definition in Article 23 shows, freedom of expression, like other fundamental freedoms, is not an unfettered right and must be exercised according to law. AS Diplock, J. (as he then was) said in his summing-up to a jury:

"Freedom of speech, like the other fundamental freedoms, is freedom under the law, and over the years the law has maintained a balance between, on the one hand, the right of the individual,.....whether he is in public life or not, to his unsullied reputation if he deserves it, and on the other hand, but equally important, the right of the public, which means you and me, and the newspaper editor and the man who, but for the present bus strike, would be on the Clapham omnibus, to express their views honestly and fearlessly on matters of public interest, even though that involves strong criticism of the conduct of public people."

(Silken v. Beaverbrook Newspapers Ltd. and Another (1958) 1 W.L.R., p. 743 at pp. 745, 746."

On page 6 he went on to say:

"The test as to whether a publication is capable of a defamatory meaning was authoritatively laid down by Lord Selborne in Capital and Counties Bank v. Henty (1882) A.C. at P. 745:

"The test, according to the authorities, is, whether under the circumstances in which the writing was published, reasonable men, to whom the publication was made, would be likely to understand it in a libellous sense."

" It is now well settled that the intention of anyone who publishes a libel is completely irrelevant and, further, as Diplock, L.J. observed in *Slim v. Daily Telegraph Ltd.* (1968) 2 Q.B. 157 at 172, in ascertaining the "natural and ordinary meaning" of words for the purpose of the law of libel, "one can start by saying that the meaning intended to be conveyed by the publisher of the words is irrelevant". "However evil the imputation upon the plaintiff's character or conduct he intended to communicate, it does not matter if, in the opinion of the adjudicator upon the meaning of the words, they did not bear any defamatory meaning. However innocent an impression of the plaintiff's character or conduct the publisher of the words intended to communicate, it does not matter if, in the opinion of the adjudicator upon the meaning of words, they did bear a defamatory meaning".

Then he quoted from Winfield and Jolowicz on Tort, 10th edition
p 269:

"Honest criticism ought to be, and is, recognised in any civilized system of law as indispensable to the efficient working of any public institution or office, and as salutary for private persons who make themselves or their work the object of public interest."

Finally, at page 9 he said:

"The comment itself must be fair and, obviously, comment cannot be fair if it is not based upon true facts in existence when the comment was made. Any person is entitled to say by way of comment on a matter of public interest what he honestly thinks, however exaggerated, obstinate or prejudiced that may be; such comment is fair comment and sustainable as a defence to a libel action unless it is so strong that no fair minded person could have made it honestly. Lord Denning, M.R. in *Slim v. Daily Telegraph Ltd.* (1968) 2 Q.B. 157 at 170 defined this element of fairness with lucidity when he observed:-

"If he was an honest man expressing his genuine opinion on a subject of public interest, then no matter that his words conveyed derogatory imputations; no matter that his opinion was wrong or exaggerated or prejudiced; and no matter that it was badly expressed so that other people read all sorts of innuendoes into it; nevertheless, he has a good defence of fair comment. His honesty is the cardinal test. He must honestly express his real view. So long as he does this, he has nothing to fear, even though other people may read more into it, see per Lord Porter in *Turner v. M.G.M. Pictures Ltd.* and per Diplock J. in *Silkin v. Beaverbrook Newspapers Ltd.* I stress this because the right of fair comment is one of the essential elements which go to make up our freedom of speech. We must ever maintain this right intact. It must not be whittled down by legal refinements.

"When a citizen is troubled by things going wrong he should be free to "write to the newspaper": and the newspaper should be free to publish his letter. It is often the only way to get things put right. The matter must, of course, be one of public interest. The writer must get his facts right; and he must honestly state his real opinion. But that being done, both he and the newspaper should be clear of any liability. They should not be deterred by fear of libel actions."

As Diplock, J. pointed out in *Silkin's case* (supra p. 747), the expression 'fair comment' is a little misleading because it is not a question of whether the jury agree with the comments or whether the jury think the comments are fair. People are entitled to hold and to express freely on matters of public interest, strong views which may indeed appear to a jury to be exaggerated, obstinate or prejudiced, provided that the views were honestly held. Accordingly, the test here is not what the ordinary reasonable man would think about the subject of comment. If a defendant exercises his rights within the limits prescribed by Lord Denning in *Slim v. Daily Telegraph Ltd.*, supra, he incurs no liability."

Finally, I should keep in mind section 7 of the Defamation Law. I can now turn to the article itself.

I can say here that I am satisfied that the defendant was not activated by malice. He bore no ill will towards any of the plaintiffs. He was playing his part in the rough and tumble of politics in this part of the world, perhaps rather boisterously and with vigour, although no more so than one could find in other examples one encounters in the press which, many may think, add spice to the inter-play of politics. I am also satisfied that the defendant, when commenting, was expressing views that he honestly held on the subject under review in the article. Where he was commenting he was expressing genuine opinions on matters about which he felt strongly.

Paragraph 1

As to the first paragraph, there is no mischief in the first sentence. There is nothing wrong with attacking the press, and many people do, whether that distresses the writer of the article or anyone else. What the writer was commenting on can fairly be described as an attack albeit that that might be somewhat of an exaggeration. It is noteworthy that ^{the} *Cayman Compass* of 19 July 1983, Ex.21, saw the remarks as an attack on the press. As to the second sentence of paragraph 1, the statement that "this is not the first time an attack on or an attempt was made to control the press" does not relate to an attack or attempt to control the press by any particular person or, for that matter, by any

particular Government. No reasonable reader could read that remark as defamatory of any of the plaintiffs.

The last part of the sentence "and I suspect it will not be the last (time an attempt is made to control the press), as long as Mr. Haig and his colleagues are the elected government" is not a statement of existing or past fact in relation to any person or persons. It is a prophecy. What the writer is saying in effect is: knowing the third plaintiff and his colleagues and their propensities as I do, I suspect that there will be another attempt to control the press. It is prophecy based on assumptions and falls within the realm of comment, again exaggerated, perhaps, but not without a grain or two of prescience when one takes account of the subsequent attempt to amend the Defamation Law in relation to press reporting. I hold that this second sentence is not defamatory of any of the plaintiffs.

Paragraph 2

The second sentence clearly alleges that the 3rd plaintiff and his colleagues (i.e. all the four plaintiffs) are of the same mentality (towards controlling the press) as "the Manley's, the Castro's, the Forbes Burnam's, the Maurice Bishop's the Papa Doc's and the Sandinista's". In my view that is an expression of a point of view. It is comment and it relates to the remarks attributed to the third plaintiff in Ex. 21 and Ex. 3. To say that of a public figure who plays a prominent part in the Government of this country, a democracy and part of the free world, must, in my view, tend to lower him in the esteem of the majority of the inhabitants here. I hold that the remark is defamatory of all four plaintiffs. However, so far as the third plaintiff is concerned it falls within the ambit of fair comment on the remarks attributed to him despite the hyperbole. It cannot amount to fair comment in relation to the other three plaintiffs who are in no way associated with the third plaintiff's remarks and there is no other fact brought to the attention of the reader that would justify such a comment.

Paragraph 3

It was contended that the passage "Mr. Haig and his colleagues

started on the road to Socialism the day they started nationalizing" was defamatory. I have examined this contention carefully, but find that I am unable to accept it. This is no reflection on the reputations of the plaintiffs as such. This is a condemnation of the policies they have pursued. No one's policies are entitled to protection from exposure to hatred, contempt or ridicule. If it were otherwise, cartoonists would soon join the ranks of the unemployed. The passage is not categorising any of the plaintiffs as socialists. The passage is certainly not comment; still less comment on the freedom of the press. It is a statement of fact, but as I understand the position the policies of a government are fair game for lampoonery however ill judged, scurrilous, baseless or distorted the attack. The court's function is to protect the reputations of individuals, not the policies of government from lampooners. There are not a few individuals who find relief, and perhaps positive enjoyment, in outrageous, irrational outbursts against government policies with which they do not agree. It can act as a valve to release pressure and keep democracy healthy.

Paragraph 4

The same may be said of this paragraph. It is merely a prediction of dire consequences if certain policies are persisted in. This sort of writing is an every day event in Britain, the only variation depending on which government is in power and which newspaper is analysing its policies.

Paragraph 5

The implication here is that the plaintiffs do not wish to countenance a free press; that they prefer that the freedom of the press be curbed. That in my view is a fairly serious imputation against a public figure in authority charged with upholding the standards of a liberal democratic country operating in the free world.

To imply that they castigate the press is not in itself defamatory. Anyone is entitled to berate or criticise the press and sometimes the press merits some chastisement. But to suggest that a person representing the community favours curbing publication of opinions other than his own must expose him to some contempt by right thinking members of the community.

The passage is plainly commenting on the remarks attributed to the third plaintiff. In my view it is still within the bounds of fair comment so far as the third plaintiff is concerned if one keeps in mind the dicta of daCosta C.J. and Lord Denning M.R. recited above. Strong and hyperbolic the passage may be but that does not place it outside the limits of fair comment.

As regards the other three plaintiffs the implication alluded to above is defamatory and the defence of fair comment is not open to the defendant as those plaintiffs were not parties to the remarks the defendant is commenting on.

Paragraphs 6 and 7

These are general observations with an enlightened quotation from John Stuart Mill to add force to them. There can be nothing offensive about these paragraphs.

Paragraph 8

To say that to carry out a certain suggestion would be undemocratic is perfectly legitimate. It may not coincide with what I understand by the word "undemocratic" but I can see no reason why anyone should not be permitted to make such an observation. It is a reflection on a policy or proposed policy. It is not an attack on anyone's reputation. It is not altogether clear to me what exactly the second sentence is saying. The concept of a "regime" being an "attack" is difficult to comprehend. But as I read this passage it is a comment on policies and not ^{on} any particular individual.

Paragraph 9

The first sentence is clearly defamatory of all four plaintiffs and not much comment from me is needed to justify that view. To accuse the elected representatives of a democratic country of the free world of undemocratic activities by stealth and insidious means is undoubtedly calculated to injure their reputations by exposing them to contempt.

It is imputing contemptible conduct of them. This is an allegation of fact. It is not comment. It has no relationship to the underlying subject matter of the article or the remarks attributed to the third plaintiff.

The last sentence is merely an observation on policies and and capability in steering the ship of state which anyone is entitled to denigrate in a free society.

Paragraph 10.

The first sentence is technically defamatory of all four plaintiffs, protected only in relation to the third plaintiff by the doctrine of fair comment. However, if it had stood on its own I doubt if this action would have been brought. I can see little mischief stemming from it. The rest of the paragraph is unexceptional.

Paragrah 11

No one could take exception to the sentiments expressed in this passage. The only comments relate to policy or proposed policy.

Where I have found any passage to be defamatory it is based on the general allegation in paragraph 12 of the statement of claim and also the substance of particulars (1), (2) and (6).

I can turn now to the question of damages.

I do not doubt that each of the plaintiffs was deeply hurt by the offending passages. No doubt each would have found them offensive and may well have had some anxiety about their effect on the electorate and their own electoral prospects. Beyond those personal feelings, however, there is no evidence of financial loss or damage.

An aggravating feature was the refusal to tender an apology at an early date. A refusal to apologise compounds the distress and often forces the aggrieved party to clear his name through ^{the} courts at

considerable expense to himself. He never recovers all his outgoings from the award of costs.

Three of the plaintiffs retained their seats at the following general election. One, the second plaintiff, lost his seat at that election, but there is nothing to suggest that that was in any way due to the article. The article appeared over 18 months before the election. It is most unlikely that its impact would have carried for that length of time in anyone's mind. One can also take judicial notice of the fact that there was a strong field of candidates in the George Town electoral district where the second plaintiff stood as a candidate. There are all sorts of factors which can account for the change of fortune of political candidates, not least being a simple, emotive desire for change.

One must also be realistic and recognise the likely impact of derogatory articles in this small community. The reality is that everyone knows every prominent citizen; knows his strengths, his weaknesses; knows his personality traits and his foibles. This is particularly so with politicians who meet the people of these Islands not only on a social level, but bring themselves to public notice at meetings and through the news media.

When one has lived in this community for any length of time one cannot help but notice that every prominent politician has his solid following and his dedicated opponents and detractors. Little can diminish the adulation of the former or soften the attitude of the latter. They know their man. The only slanderous remark that would probably make a significant dent would be an imputation of a serious offence or moral weakness that comes as a revelation. This, of course, is a generalisation and does not tell the whole story. Derogatory remarks will have an effect on some. The point is made in the context of the likely measure of damage done.

It has been urged that the article taken as a whole castigates the plaintiffs as socialists and communists. Socialism and communism are dirty words to most of the community although I dare say the associations these words conjure in the minds of persons using or hearing them are far

from uniform. They are, for the most part, used as terms of abuse.

I have held that these words and cognate variations in the article refer not to the plaintiffs themselves but are aimed at certain policies, whether they can be accurately so described or not. But if I am wrong about that, where does it leave us? Nobody in this community would believe that any of these gentlemen espoused the cause of socialism or communism. The use of these terms is part of the political horseplay which leaves no one with the impression that they are intended as accurate representations of the sincere outlook of any of the politicians here who have any serious chance of success with the electorate. Not even their more serious detractors would believe that any of these gentlemen are consciously or unconsciously leading the country towards the path of communism or socialism.

As I see it, in assessing damages, I am more concerned with the hurt caused to the plaintiffs than any lasting damage done to their reputations. Even in the short term, having regard to what I have already said, I would be surprised if the impact would have been great. When you know a person well, whether you like him or not, very little that his political opponents may say about him is going to disturb the image of him you have built up from knowledge acquired over years. That is what makes the impact of any defamatory remark so different in a small community from what it might be in a larger one. The chief exception to this arises where the slanderous remark purports to be a revelation of the commission of an offence involving moral turpitude or some other moral lapse.

Another consideration is the cumulative effect of several slurs in the same article. In my view, one elides into another but, although the overall effect of several slanderous remarks is more serious than any one of them, I do not believe that the seriousness increases in arithmetical progression. In the end I think that it is the function of the court to consider the overall effect of the article and try to compensate for the hurt and damage done by the slanderous remarks therein bearing in mind the

size of the community, the likely reaction of the majority of the community, and the other factors I have outlined. Another factor is the transient effect any such article is likely to have when a regular feature of our lives is the reading of letters to the editor and reports of orators on political platforms hurling abuse one to another. Politics in this country is nothing if not bullent and long may it remain so provided that exchanges fall short of inflicting injury on the reputation of another. And perhaps it is as well to make the point that slanderous remarks are no less serious simply because they are made on the hustings.

In making the foregoing observations account has been taken of matters of which judicial notice can be taken.

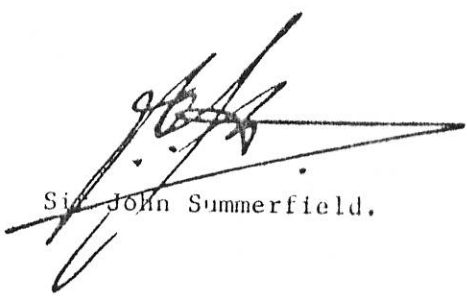
The most serious libel in the article is that contained in paragraph 9. What I have said is not in any way intended to minimise the effect of that passage - merely to place it and some of the other slurs in some perspective, because it has been urged that very heavy damages should be awarded. In my view that is not the case. Moderate damages should suffice.

Bearing the foregoing in mind I assess damages in relation to the first, second and fourth plaintiffs in the sum of C.I.\$5000 and in relation to the third plaintiff in the sum of C.I.\$3000.

From these sums must be deducted any sums paid to each plaintiff by way of damages by the second and third defendants when the case against them in relation to this article was settled. The net amount after that deduction is the award in this case. Awards are made accordingly.

Relief by way of injunction sought in the statement of claim was, rightly, not pursued at the hearing. No order will be made in that regard.

The defendant will pay the plaintiffs' costs.



Sir John Summerfield.

19th June 1986.