Conybeare v. Yates

This libel case was heard *before*
Lord John Duke Coleridge, 1st Baron Coleridge, Lord Chief Justice of England,
in the High Court of Justice, **Queen's Bench Division**, on 20 February 1882.

Plaintiff:
Charles Augustus Vansittart Conybeare

Counsel for the Plaintiff:
Mr Day QC
Mr Willis QC
Mr Bigham

Defendant:
Yates (***World***)

Counsel for the Defendant:
Mr C. Russell QC
Mr F. Lewis QC

Special Jury

Criticisms of Conybeare
(i) cross-grained, ill-conditioned splutterer
(ii) known for disturbing harmony
(iii) litigious
(iv) blocking payments to trustees
(v) not representing bondholders

1. John Charles Conybeare

Introduction
This was a civil action against the proprietors of the *World* for libel. The defence in substance was:
(i) that it was matter of 'fair comment and discussion', and
(ii) that it was in substance true.
A shilling was paid into Court as nominal damages for any excess.

Libel in headline about bondholders' meeting
The libel was in a paragraph in the *World* of 16 February 1881, headed, "Obstruction of just rewards," purporting to state the result of a meeting of the New York, Pennsylvania and Ohio bond-and-stockholders, which, it was said, was as successful as the retiring but re-elected trustees could have wished for.

Conybeare blocks trustees' compensation
The publication *World* then stated that the bondholders had voted to pay the trustees a handsome sum in return for their arduous contribution on the reconstruction of the old Atlantic and Great Western into the New York, Pennsylvania and Ohio Railway. However, the trustees, had not been permitted to touch the money voted to them. This was because Charles Conybeare, who owned a single £26 bond, had decided to block payment to the trustees.

***World* reports critically on Conybeare's intervention**
The publication *World* referred to the plaintiff, Charles Conybeare, as "one cross-grained and ill-conditioned splutterer", who, "apt at disturbing harmony", and "being the happy possessor of one bond of £26", had "plunged into a sea of litigation and prevented the trustees receiving their reward". He had done so, purporting to represent the other bondholders.

Bondholders contest Conybeare's representative role
However, Conybeare's role as representative of the bondholders had been rejected by a unanimous vote of the bondholders, who then appointed two of their number to:
(i) represent the bondholders in the legal action that Conybeare had instigated, and (ii) to inform the Court that Conybeare's action was being carried out against the wishes of the bondholders.

Opening evidence
When the case opened, it appeared from the documents referred to, that Mr Conybeare Snr[1] and his son, the plaintiff, had both been connected with the *Atlantic and Great Western Railway*, which was reorganised into the New York, Pennsylvania and Ohio Railway Company, and for which a trust had been set up for the purposes of carrying out the reorganisation.

bondholders agree to pay trustees £40,000

Bondholders agree to pay trustees £40,000

In December 1879, a meeting of the bondholders was held, without notice of it, at which bondholders voted on a resolution to pay the trustees £40,000 for their services in carrying out the reorganisation of the company. The result was confirmed in a meeting held the following March, notice of which had been given. Mr Conybeare Snr, however, objected to and opposed these payments to the trustees.

Chancery suit: Conybeare acts to prevent trustees being paid

In January 1880, the plaintiff, Mr Charles Conybeare Jnr, instituted a suit, at his father's suggestion, to prevent the trustees from receiving the reward which the bondholders had agreed to offer them.

Libel suit: Conybeare Jnr initiates suit against the *World*

World had already paid the Court a shilling damages, for printing "ill-conditioned, cross-grained splutterer" statement

Then, in February 1881, there appeared in *World* the paragraph complained of as libellous. As a result, this action was brought by the son, Mr C. A. Conybeare, in which the defendant [*World*] not only set up [ed. argued] that it was matter of fair comment and discussion, but that, apart from the statement that Conybeare was an "ill-conditioned, cross-grained splutterer," what they had printed was in substance true, and for that excess, the defendant had paid a shilling into Court.

Defendant (*Yates*) cross-examined

defendant unaware of:
(i) sum of money involved
(ii) what services trustees had rendered
(iii) other circumstances...

During the case, the defendant was cross-examined. The defendant said that it had:

- no knowledge of the sum of money, if any, voted to the trustees as their remuneration, as alleged
- no knowledge of the other circumstances referred to
- no knowledge or information as to the services rendered by the trustees, or the remuneration they were to receive.

...and refused to name author

Moreover, the defendant said, "the article in question had not been written by any of the defendants, and objected to having to divulge the name of the person who had authored it", as that was "irrelevant to the issue being tried".

Case for the Plaintiff

Mr DAY, in opening the case for the plaintiff, said that the libel was really aimed at Mr Conybeare Snr, though it had primarily referred to his son, Charles Conybeare.

World had:
(i) used author who disliked Conybeare to report on him
(ii) refused to reveal author's name
(iii) insulted Conybeare by arguing that libel was true
(iv) paid a shilling for a libel

Mr DAY: The *World*, he said, had "lent itself to some persons who had a malignant feeling towards the plaintiff", and as they refused to divulge the name of the writer, they were fairly answerable. The defendant had not apologised for the libel, and had insulted the plaintiff by setting up [ed. arguing] that the libel was in substance true, except for the words "ill-conditioned splutterer," for which they had paid him nominal damages of one shilling. This gave him no alternative but to bring this action to vindicate his character.

Trust construction
Evidence was then entered into as to the constitution of the trust and the absence of any right to the remuneration voted.

Judge wonders how accusing Conybeare of opposing the payment of the trustees was 'libellous', when it was his legal right to do so

Lord COLERIDGE observed that it appeared to him that these matters were very irrelevant. Suppose there was a perfect right to remuneration, and suppose it was quite right and just, a shareholder still had the right to resist it, and Mr Conybeare would be within his legal rights to oppose it. How, then, was it libellous to claim that he had opposed it?

Mr WILLIS argued that it would be libellous to claim that he had done so unfairly and unjustly.

assessment fund for reconstruction expenses contained £23,000

The evidence regarding the construction of the trust, however, was not objected to by the defence, and so was gone into at some length. However, the substance of the case for the plaintiff is as above stated. It appeared that bondholders had subscribed £23,000 to an 'assessment fund' to pay for the reconstruction expenses.

Witness 1: Secretary to Bondholders' Committee
The Secretary to Bondholders said that he had received about £3,400, and was still making a further claim for additional expenses. There were, he said:

£3,000,000 **first mortgage bonds**
£2,500,000 **second mortgage bonds**
£5,500,000 **third mortgage bonds**
£8,000,000 **original shares**
£19,000,000 (that is, 19 millions sterling).

The scheme, the Secretary said, had become "hopelessly insolvent" in 1879. The scheme was that of the holders of the first mortgage bonds. The work of the committees of bondholders and the trustees in 1879, had resulted in vastly raising the value of the property. The voluntary subscriptions of the bondholders had all been repaid. He certainly thought that the trustees ought to be paid for their services. The resolution for remuneration was, he said, voted almost unanimously, and at the second meeting, which was largely attended, the resolution was sanctioned at a meeting chaired by Mr Charles Lewis MP.

resolution to pay trustees handsomely was almost unanimously agreed

Chief Clerk to decide how much to pay trustees (Chancery suit)

The witness said he thought that the bondholders themselves were the best judges as to the remuneration. The Master of the Rolls, in a separate court case, had referred the matter to the Chief Clerk to decide what was a fair amount to pay the trustees.

Witness 2: Mr Conybeare Snr

Mr John Charles Conybeare, the father of the plaintiff, was then called to give evidence. He stated that he had held a large number of the company's bonds. He was then asked about the history of the matter, to show, as Mr Willis said, that Mr Conybeare Jnr, the plaintiff, had not acted alone, but at the suggestion of his father.

Mr C. RUSSELL observed that this was just what he had supposed; that this was the action of the father in the name of the son.

The 1875 Deed arranged for trustees to receive £2,000 each

Mr CONYBEARE Snr stated that Mr M'Henery had offered to pay one of the trustees £1,000 or £2,000, and a deed dated 1875 was produced as evidence. The deed stated that the trustees would be paid "the agreed remuneration," which, the witness said, was to be "£2,000 to each trustee". The deed, he said, was prepared under the instructions of the Bondholders' Protection Committee, of which he was chairman, and Mr M'Henery.

Conybeare Snr sold more than £50,000 worth of bonds between 1875 and 1879

Conybeare Snr gifted bonds to his son to give him voting rights at meetings

Charles Conybeare's opposition to proposed remuneration was noted by Secretary

The witness, also stated that in 1875, he had sold £50,000 worth of bonds, and further bonds in May 1879, and that he ceased to be chairman. However, as he still was a bondholder, he was present at the meeting. The witness said he had gifted his son four bonds, first with a single, third-mortgage bond of $1,000, the price being £26, and then afterwards he transferred to him three more bonds, a bond of every class, so as to make him represent every class. He then took his son to the Bondholders' Protection Committee Meeting, where the Secretary noted how adverse he was to the proposed appropriation of the funds for the payment of the trustees.

Conybeare Jnr instructs solicitor to bring suit

The plaintiff's son, Charles Conybeare then went to his solicitor and instructed him to take out an injunction to prevent that appropriation. The witness did not bring the suit himself on account of his health.

Conybeare Snr cross-examined

Conybeare Snr admits Chancery litigation was his idea

In cross-examination, the witness said the litigation in Chancery was really his own, and was not done to protect any of his own interests, but to protect the bondholders' funds. When the action was commenced by his son, he only held four bonds**,** and did not believe that one of them was worth as much as £26.

Witness 3: Mr M'Henery

Mr M'Henery was called to prove the claim that arrangements had been made so that the trustees could each receive £2,000.

Witness 4: Mr Conybeare Jnr

Mr Conybeare Jnr, the plaintiff, was then called to give evidence. He stated that he had instituted the Chancery suit at the suggestion of his father. In cross-examination, he stated that his father was paying for (i) the Chancery suit and (ii) this action.

Q: Witness was asked what part of the alleged libel he took offence to.

What Conybeare found 'libellous':
1. That he was litigious.
2. That he was obstructing payment to trustees.
3. That he represented other bondholders.

Mr CONYBEARE Jnr: "That I, out of a purely litigious spirit, plunged into a sea of litigation for the purpose of obstructing payment of rewards to which the trustees were justly entitled, professing to be supported by other bondholders, when, in truth, I was not."

Q: Witness was asked whether he could mention anyone other than his father and two others (one of whom was the secretary of the Committee), who had given him authority to act for the bondholders.

Mr CONYBEARE Jnr answered that he would not name any other.

Q: Witness was asked whether he would say that he had the authority even of those two persons.

Mr CONYBEARE Jnr replied that he could not positively say whether he had their express authority for the suit, but he believed that he had their *approval* and that of others.

Witnesses 5 & 6: **Two bondholders**

2. Secretary to B.C. and another unnamed person

Two bondholders[2] (those referred to) were called to prove that they objected to the remuneration proposed, and that they had approved of the Chancery suit Conybeare had instigated. However, on cross-examination, it appeared that they were not contributing anything towards the costs of the case, nor had they made themselves in anyway responsible for it.

Witness 7: Mr Charles Lewis MP

chairman of the bondholder's 'sanction' meeting

Without making any observations, Mr Russell for the defence, simply called Mr Charles Lewis MP as a witness, but as he entered the witness-box, the Foreman of the Jury intervened...

Jury Forman intervenes to halt case

The **Foreman of the Jury** said their minds were made up on the case as it stood, in favour of the defendant (*Yates*). Moreover, they did not think it would be worthwhile pursuing the case any further. The members of the jury were quite willing to hear anything else that Mr Willis had to tell them, but, as the case stood, they did not need to hear the defendant's case as well.

Mr C. RUSSELL (for the defendant) said he was quite prepared to leave the case as it stood.

paraphrased version:
Can I assume, then, that by prematurely halting proceedings, the Jury has vindicated the plaintiff's character?

Mr WILLIS (for the plaintiff) said if the jury would intimate their opinion that there was nothing to reflect upon the character of the plaintiff...

Lord COLERIDGE: "They have not said that. They are not bound to say so, nor to give any reason for the resolution they have arrived at".

Mr WILLIS addresses Jury

After expressing his wish to address the Jury, Mr Willis proceeded to argue the case for the plaintiff...

Judge finds Plaintiff's suit most unreasonable

Mr WILLIS: To suggest that Conybeare had instigated "vexatious' and groundless litigation, putting people to trouble and expense, merely in a litigious spirit", was a serious allegation made against the character of a man. Had Mr Conybeare acted in such a way, he said, he would have acted hatefully. However, Mr Willis argued, the plaintiff had not acted on such motives, but had acted on 'fair and reasonable grounds' when instituting the Chancery suit.

Lord COLERIDGE, briefly addressing the Jury, said**:** I should have thought the plaintiff's counsel might have been content with hearing the opinion of the Jury after hearing the whole of the case.

The Foreman (adds): And after carefully considering it.

Lord COLERIDGE: I have no doubt of it.

Summing up

Lord COLERIDGE: And to suppose that a special jury, after hearing the whole of a case, would change the opinion they had come to merely as a result of a speech by counsel, was really ascribing more power to forensic eloquence than he had ever known it exercise under such circumstances.

defence of privilege applies here, unless there was malice

No doubt the words "cross-grained and ill-conditioned splutterer, etc." were *prima facie* libellous, but as the occasion was privileged♠, they would not be actionable unless used maliciously, which it was for the Jury to decide, given all the circumstances.

The jury had, in his view, properly stopped the case, after having heard the whole case for the plaintiff. The Jury were asked to consider the following questions:

1. Was there malice?
2. Was the libel true in substance, with the exception of the words[3] as to which the shilling was paid into court?
3. In respect to those words, was that enough?

3. "ill-mannered, cross-grained splutterer".

Jury thought one shilling damages too much

Jury's consults and responds

The jury, after a brief consultation, said, as regards the last point, that they thought the shilling, if anything, was rather too much. (Laughter.)

Lord COLERIDGE: If it is too much, then it is enough; that is clear. (Laughter.)

♠ Aimed at preserving the liberty of the press, **the defence of privilege** in the law of libel can sometimes be relied on if the convenience of publicity (public benefit) outweighs the chance of minor injury to an individual's character or reputation. Source: Adapted from *Preserving the Liberty of the Press by the Defense of Privilege in Libel Actions*, by John M. Hall, Vol. 26, No. 2, 1938, pp. 226-239.

Jury's consults again

The jury, after a short further consideration, found that:
1. There was no malice in the article published in *World*.
2. The article was true in substance (except the words referred to).
3. The shilling [ed. nominal damages already paid] was sufficient for having expressed those words.

Judgment

plaintiff ordered to pay defendant's costs

case was v. unreasonable

His Lordship immediately gave judgment, finding in favour of the defendant (*Yates*), and ordered the speedy settlement of the defendant's costs in order, he said, to reflect what he regarded as the unreasonableness of the action brought to Court.

Author's Note

This account is based on, and adapted from, the case of
Conybeare v. Yates
reported in 'Law Report' of 20 February, published in *The Times* on 21 February 1882.
The headings, margin notes and footnotes in this account were devised by the author for the purposes of structuring and clarifying the material. The original text, as it appeared in 1882, has necessarily been updated to eliminate legalese, archaic language and to enhance readability.
