IN THE COURT OF APPEAL OF NEW ZEALAND

C.A. 239/90
C.A. 240/90
C.A. 241/90
C.A. 253/90
C.A. 254/90
C.A. 255/90

BETWEEN KEITH LEIGH PETERSON of Auckland, Solicitor

THE ATTORNEY-GENERAL OF NEW ZEALAND (sued on behalf of Minister of Justice)

WELLINGTON NEWSPAPERS LIMITED, a duly incorporated company having its registered office at Wellington, Newspaper Publisher

AUCKLAND STAR LIMITED, a duly incorporated company having its registered office at Auckland, Newspaper Publisher

THE SUN PUBLISHING COMPANY LIMITED, a duly incorporated company having its registered office at Auckland, Newspaper Publisher

BROADCASTING CORPORATION OF NEW ZEALAND LTD, a body corporate constituted under Section 4 of the Broadcasting Act 1976

Appellants

A N D DAVID ALLAN WALTER HYAMS of Auckland, Solicitor

Respondent

Coram: Cooke P.
Richardson J.
Hardie Boys J.

Hearing: 13 and 14 May 1991

Counsel: C.R. Pidgeon Q.C. for K.L. Peterson
D.L. Mathieson Q.C. and J.C. Pike for The Attorney-General
J.B. Stevenson for Wellington Newspapers Limited
C.S. Blackie and Jean McCormick for Auckland Star Limited and Sun Publishing Company Limited
W. Akel and Helen Wild for Broadcasting Corporation of New Zealand Limited
W.D. Baragwanath Q.C. and G.M. Illingworth for Respondent

Judgment: 12 June 1991

JUDGMENT OF THE COURT DELIVERED BY COOKE P.

In a suit for defamation the plaintiff in the High Court, David Allan Walter Hyams of Auckland, solicitor, is suing a number of defendants and initially pleaded in all 20 causes of action. The fourth defendant, a newspaper reporter, has been struck out of the proceeding by consent. The remaining defendants are Keith Leigh Peterson, until his dismissal on 17 June 1988, senior investigating solicitor in Auckland in the commercial affairs division of the Department of Justice; the Attorney-General on behalf of the Crown sued as vicariously liable for the statements of Mr Peterson; three newspaper companies; and the Broadcasting Corporation of New Zealand. The Crown contends that some of Mr Peterson's statements sued on in the proceeding were not made in the course of his employment, and accordingly denies vicarious liability, but as to the issues raised by the present appeals the Crown and Mr Peterson make largely common cause.

The issues raised by the present appeals have been treated in argument to some extent as twofold: namely (i) whether as to most of the surviving alleged causes of action the publications sued on, being mainly media reports including statements made by or attributed to Mr Peterson, are capable of referring to the plaintiff; (ii) whether as to all the surviving alleged causes of action the words sued on are capable, in their natural and ordinary meaning and also by reason of certain facts pleaded by the plaintiff, of the following meanings pleaded by the plaintiff:

> (a) The plaintiff was guilty of fraudulent dealings and/or offences under the Insolvency Act and/or the Companies Act and/or being a party thereto.
>
> (b) The plaintiff was a member of a group, the members of which acted individually or in concert to effect dealings of a fraudulent, criminal and/or illegal nature.
>
> (c) The first defendant had prima facie evidence of the matters referred to in sub-paragraph (a) and/or (b) hereof based upon responsible preliminary inquiry.
>
> (d) The first defendant had sufficient evidence based on sufficient preliminary inquiry to justify expressly naming the plaintiff in an official Justice Department memorandum dealing with allegations of fraud and statutory offences and to justify calling for an official inquiry into whether he was guilty thereof.
>
> (e) That the first defendant had reasonable grounds for believing the matters referred to in sub-paragraphs (a) and/or (b) hereof.
>
> (f) That the first defendant had reasonable grounds for suspecting the matters referred to in sub-paragraphs (a) and/or (b) hereof.

While the twofold approach is convenient, it is not ultimately correct to divide the issue into two. As to each publication sued on, the ultimate issue as far as the meaning is concerned must be whether the words were published of and concerning the plaintiff and defamed him in one or more of the ways alleged in the amended statement of claim, paragraph 1.13(a) to (f) inclusive just quoted. This is a case where the two aspects of the issue merge, as the question of reference to the plaintiff cannot be isolated from the question of the sting or meaning of what was published. This merger must be kept in mind in considering the appeals. In the end what the plaintiff has to prove separately on each cause of action is that the publication in question defamed him as he alleges.

The appeals are from a pre-trial judgment of Wylie J. on striking-out applications by the defendants. The Judge held that all the applications failed, except one by Auckland Star Limited to strike out the eleventh pleaded cause of action. There is no cross-appeal as to that. The defendants all appeal from his refusal to grant their other applications. During the hearing in this Court counsel for the respondent intimated that there will be amendments to the statement of claim to combine the ninth and tenth causes of action (relating to material in the same issue of the Sunday Star) and also that certain innuendoes pleaded in causes of action against Wellington Newspapers Limited will be 'personalised' so as to make it explicit that the

defamatory imputation is alleged to include the plaintiff among those to whom it applies. Another matter concerning the pleadings which should be mentioned but does not give rise to any particular issue requiring discussion in the present judgment is that some of the pleaded causes of action cover strictly more than one publication - for instance, an oral publication by Mr Peterson to a newspaper reporter and a publication of substantially the same material in the newspaper as a consequence.

For the purpose of determining the issues raised by the appeals it has been essential to consider each publication sued on in full, and in some instances, as where the plaintiff sues on only part of an article, in its particular context. In addition the general context and climate of public discussion is very important, as will appear. In his judgment Wylie J. sets out each publication sued on, in the course of an examination of the causes of action seriatim. Bearing in mind that the High Court Judge has done that, we do not propose to lengthen this judgment by having all the publications copied here. They will, of course, have to be separately considered at the trial, if the case goes to trial, but the conclusion that we have reached on the appeals can be explained without reproducing all the material. It is enough to summarise some of the background of news media publicity which preceded or accompanied the publications sued on, and some of those publications themselves.

Relevant Publications

The first relevant publication, although it is relied on by the plaintiff as only a background document and is not alleged to give rise itself to a cause of action in the plaintiff, was an article in the Dominion Sunday Times of 8 May 1988 headed PROPERTY FRAUD RING NETS MILLIONS. Its opening paragraphs read:

> Suspected frauds involving hundreds of millions of dollars have been uncovered by The Dominion Sunday Times and the commercial affairs division of the Justice Department.
>
> Huge amounts of small investors' savings have been put at risk by the activities of a group of mortgage lending companies, lawyers, accountants, and a group of businessmen known to the division as the Gang of 20 and God's Mafia.
>
> The division's senior investigating solicitor in Auckland, Keith Peterson, says it is impossible to details the volume of money involved in the scam, "but in terms of the number of dealings identified so far, and mortgage advances, it could be hundreds of millions of dollars".

The article, quite long, includes these passages:

> Several different types of scams have so far been identified in the transactions.
> ...
>
> The group works as a kind of members-only trading co-operative with each individual or company pulling its own scam before passing a property on to the next member.

The expression 'Gang of 20' there attributed to the division (though we were told that Mr Peterson disclaims being the originator of the expression and attributes it rather to the media) came to be used quite frequently in

subsequent media publicity about white-collar crime. In particular The Dominion and The Dominion Sunday Times made prominent use of it in a series of articles. It was something of a peg or focal point on which articles were hung or centred. As the story developed and as Ministers of the Crown, the Chairman of the Securities Commission, the Secretary for Justice and others made statements critical of the sweeping and 'frolic of his own' allegations of Mr Peterson, the media became rather more cautious than the opening Dominion Sunday Times headline with its 'Property Fraud Ring'; but, having been taken through all the material, we are in no doubt that some reasonable readers or viewers on being told that someone was a member of the Gang of 20 would regard him as probably fraudulent, albeit perhaps in an undefined way, or think at least that there were substantial grounds for suspecting his probity.

The first document sued on is a memorandum by Mr Peterson to his immediately superior officer Robert On Hing. It is dated 26 May 1988 and there are allegations of publication between that date and 8 June 1988 to various reporters, Members of Parliament and others. Parts of the memorandum are sued on, the whole being nevertheless annexed to the amended statement of claim. Only Mr Peterson and the Crown as his employer are sued on this cause of action. The memorandum urges that Mr Peterson be permitted to continue with an investigation with a view to ridding the commercial community of 'fraudulent parasites'. It says that the

fraudulent dealings so far identified are nationwide, but mainly in the North Island. The purpose of the inquiry is said to be 'Identify apparently fraudulent property dealings and transactions directly or indirectly involving any of the following persons'. A list of 29 names is then given, the penultimate name on the list being David Hyams. Later a list of 23 companies is given.

On or about 7 June 1988 the then Leader of the Opposition (Mr Bolger) released to the media Mr Peterson's memorandum of 26 May 1988, but with the names of the listed persons and companies deleted. On 8 June 1988 following reference by the then Minister of Health (Mr Caygill) to the document in the course of political debate it was tabled, unexpurgated, in the House of Representatives on the request of the Leader of the Opposition, although the Minister made it clear that he did not consider it reliable. As a result the memorandum, including the names, received newspaper publicity. The plaintiff does not sue on anything said in the House (which would be subject to absolute parliamentary privilege) or on any reports of what was said in the House (which would be subject to qualified privilege). He relies on some of the reports, however, as background or extrinsic material to be considered in appreciating the likely impact and meaning of publications on which he does sue. We will return to this point.

The second cause of action (so pleaded, although it embraces both slander and libel) is against the Crown and Mr Peterson and the publishers of the Auckland Star. It is based on alleged statements by Mr Peterson to a reporter on 12 June 1988 and an article in that paper on that day headed 'The Politics of Scam-Busting. Justice Men Clash in Hunt for Gang'. The theme of the article is an allegation by Mr Peterson that the Department is frustrating him in his efforts to cause a special inquiry to be made into the nature and extent of corporate fraud. He is quoted in the article as saying that the Gang of 20 has now grown to a gang of 87 and he expects the list to grow longer. It includes the sentence 'My work with investigative journalists has been directed mainly towards identifying the extent of the dealings of those we could loosely describe as a "gang" over the past three years and the various patterns followed in them'.

In giving particulars of why this article is alleged to refer to the plaintiff, the amended statement of claim mentions widespread publicity given to the memorandum of 8 May 1988, including references in television news broadcasts to the plaintiff by name as an Auckland lawyer included in the list. It is to be noted that the names of only three lawyers were included in the list of 29 persons in the memorandum, although their occupation was not there specified.

The third cause of action pleaded, which is against Mr Peterson, the Crown and the Broadcasting Corporation, relates to words spoken by Mr Peterson in a television broadcast on 16 June 1988, beginning 'I reject the statement by Mr Palmer that the Securities Commission investigation shows that there is no need to investigate other people named in the Justice Department memo tabled in Parliament last week and that the journalists, the Opposition and a member of his own Justice Department are to blame for any innocent individuals smeared by the allegations'. The theme is that further evidence and grounds exist to justify pursuing the inquiry and that proof will come if the inquiry goes on. A further television broadcast on the same day, including reports of remarks by the then Minister of Justice (Mr Palmer), the Leader of the Opposition and Mr Peterson, is also pleaded.

The fourth cause of action is pleaded against Mr Peterson and the Crown only but includes an allegation that on or about 17 June 1988 Mr Peterson spoke to a reporter for the New Zealand Herald words including the statement that he would not back down from his claims over the 'Gang of 20' property frauds. It is alleged that the newspaper published substantially the words spoken to the reporter by Mr Peterson under the heading 'Lawyer Sticks to Call for Inquiry'. A copy of the article is attached to the statement of claim. The newspaper itself is not sued on this publication.

The fifth cause of action, against Mr Peterson, the Crown and Sun Publishing Company Limited, relates to publication to and by The Sun on or about 17 June 1988. The material sued on includes a reference to the 'so called Gang of 20'. Mr Peterson is quoted as saying that while more probative material remains to be gathered before certainty can be assured, 'we are satisfied that it (the material already gathered) already provides reasonable grounds for belief that many fraudulent "white-collar" offences have been committed'.

For the reasons already given, we will not set out details of all the remaining causes of action pleaded. The following general points will suffice. In all but one of the publications sued on, the plaintiff is not named. A frequent theme is that the Government and more senior administrative officers are distancing themselves from Mr Peterson's allegations but he is adhering to his call for an inquiry. The expression 'Gang of 20' becomes less commonly used as the suggested number of people suspected of fraud rises. Some of the publications sued on are quite short and, considered in isolation, would be innocuous to the plaintiff. The last point may be brought out by quoting the words sued on in the twelfth and nineteenth causes of action. The twelfth is based on a report in the Auckland Star of 20 June 1988 reading:

> Fraud report 'risky'. The Securities Commission report on white collar crime is a superficial document thrown together without adequate research, Justice spokesman Opposition Paul East says. Justice Minister Geoffrey Palmer is running a grave risk in relying on the report to counter the findings of senior Justice Department solicitor Keith Peterson, he says.

The nineteenth is based on a letter to the editor published in The Dominion of 25 June 1988 under the heading 'Solicitor True to Himself':

> I write in defence of Keith Peterson, investigating solicitor of the Justice Department in Auckland . ... All I know is what I have read of his reports, in both The Dominion and The Dominion Sunday Times, and he impresses me with his courage. His research alone would have taken hundreds of hours. In doing so, he must have found the discrepancies that caused him to raise the questions he has. No solicitor worthy of the title is going to go off half-cocked on so serious a matter. I do not like the idea of someone being silenced for speaking the truth. I think Keith Peterson has been true to himself. Therefore, how could he be accused of being less than that to others?

The foregoing outline will be enough to introduce the following reasons.

The Relevant Principles of Law

For the purpose of determining the appeals, it is sufficient to apply principles of law that are familiar and well settled.

Where there is an attack on a group and the plaintiff is not named, the question whether the material was published of and concerning the plaintiff turns on whether

the words published would themselves reasonably lead people acquainted with the plaintiff to the conclusion that he was a person referred to. If a defamatory statement made of a class or group is reasonably to be understood to refer to every member of it, each one has a cause of action: Knupffer v. London Express Newspaper Ltd [1944] A.C. 116; Christchurch Press Co. Ltd v. McGaveston [1986] 1 N.Z.L.R. 610.

The speeches in Knuppfer's case touch on the more difficult question of the relevance of an actual intention on the part of the writer of an article to refer to the plaintiff, although the article may be couched in general terms. Whether evidence of actual intention is admissible on the issue of identification, and more specifically whether proof of actual intention may let in evidence of later publications by the defendant or others, was not fully argued on the present appeals. It is not now necessary to consider the criticism by Hunt J. in Baltinos v. Foreign Language Publications Pty Ltd (1986) 6 N.S.W.L.R. 85 of part of the Privy Council judgment in Lloyd v. David Syme & Co. Ltd [1986] A.C. 350, 364. These questions may never arise at the trial. It may be that, although the ultimate issue is the impact of the publication sued on, evidence of a defendant's intention to hit at the plaintiff should be admissible, not merely on issues as to damages or malice, but for all purposes: the defendant's assessment of the tendency of his words is something on which some reliance

can fairly be placed. That may well extend to cases where the defendant's words appear to invite the public to refer to subsequent publications to ascertain the identity of the person referred to. But, if any of these points become material at the trial, it remains open to any defendant in this case to argue otherwise before the trial Judge.

To return to established principle, we accept Mr Stevenson's submission for Wellington Newspapers Limited that it is not enough that on reading an attack on a group the mind of a person knowing of the plaintiff's membership of the group goes to him. The question is whether there is anything in the article or the admissible surrounding circumstances to identify him as the person or one of the persons referred to or aimed at in the article itself.

It is also plain that to say that there are grounds for suspecting a person of fraud or other discreditable conduct is, although defamatory, often different from and less serious than an assertion of his guilt: Lewis v. Daily Telegraph Ltd [1964] A.C. 234; Truth (NZ) Ltd v. Bowles [1966] N.Z.L.R. 303; Broadcasting Corporation of New Zealand v. Crush [1988] 2 N.Z.L.R. 234, 239-40; Mirror Newspapers Ltd v. Harrison (1982) 42 A.L.R. 487. These judgments also recognise that for practical purposes there can be an imputation of suspicion so strong as to be indistinguishable from guilt; it must always be a question of fact how far the defamatory meaning goes.

Further, to be actionable as a libel a statement must itself be false and defamatory of the plaintiff; if it is itself innocent, it is not possible, by pleading innuendoes, to make the defendant responsible for defamatory statements by other persons which are not expressly or by implication approved, adopted or repeated in the statement by the defendant in respect of which the action is brought: Astaire v. Campling [1965] 3 All E.R. 666. We have taken those propositions from the headnote to that report, which fairly summarises the judgment in the English Court of Appeal. Two sentences from Sellers L.J. at 667 may be selected as containing the gist of the decision:

> The public mind may no doubt be relevant in a case of identity, but if it has been affected by defamatory statements made by someone other than the defendant and not by the defendant, the article does not seem to me to make the defendant liable for anything more than it contains. It must be brought home by the evidence of innuendo to a reader that the article itself, which is the article complained of as the libel, has in the light of all the circumstances a defamatory meaning.

On pre-trial applications such as the present, the Court has to rule on whether the words complained of are capable of being found defamatory of the plaintiff, that is to say whether they could reasonably be taken to refer to the plaintiff and to have a defamatory meaning as alleged. If that question is answered Yes, the question at the trial for the tribunal of fact (whether jury or Judge alone) will be whether they would reasonably be so taken:

Morgan v. Odhams Press Ltd [1971] 2 All E.R. 1156; Christchurch Press Co. Ltd v. McGaveston (supra).

As already indicated, except for the question of evidence of intention, we do not regard the foregoing propositions of law as in any significant doubt. There is no advantage in multiplying authorities for them. But we were urged for the appellants to adopt a new principle, one for which it was acknowledged no direct authority can be found. It is clear that an extrinsic fact known to readers of an article may be proved in order to show that the article refers to the plaintiff or bears a defamatory meaning. For instance, apart from the suggested new principle, if an article has stated that the Gang of 20 are all fraudulent, extrinsic evidence may be given that the plaintiff was known to readers of the article as a member of the gang. The suggested new principle would place a limitation on the admissibility of extrinsic evidence for such purposes. As formulated by Mr Mathieson in his reply, it is that a prior publication on a privileged occasion is not capable of being used to afford a link between an innocent (that is to say, non actionable) publication and the plaintiff individually.

This new principle is contended to be justified for social or policy reasons pertaining to freedom of speech and the right of the media to discuss public issues. The particular contention in the present case is, in effect,

that because the public naming of the plaintiff as a member of the Gang of 20 was in reports enjoying qualified privilege of parliamentary proceedings enjoying absolute privilege, the plaintiff is debarred from showing by reference to those reports that readers of the later publications sued on would reasonably have understood them as referring to him.

In Orama v. Uganda Argus Ltd [1969] E.A. 90 the Court of Appeal at Kampala rejected a similar contention, holding that where the plaintiff sued on a report of a press conference he could use a prior report of parliamentary proceedings to show that he was the person referred to at the press conference. We respectfully and entirely agree.

The point has nothing to do with the scope of parliamentary privilege. In Church of Scientology of California v. Johnson-Smith [1972] 1 Q.B. 522 Browne J. accepted that what is said or done in the House in the course of proceedings there cannot be examined outside Parliament for the purpose of supporting a cause of action, even though the cause of action itself arises out of something done outside the House. That was a case where support for an allegation of malice to refute a plea of fair comment was sought, unsuccessfully, from a reading of Hansard. The limits of the principle for which the case stands do not now arise for discussion. The plaintiff in the present case is not seeking to refer to any

parliamentary proceedings, only to reports of parliamentary proceedings. In no way is the plaintiff, in the word used in the Bill of Rights 1688, 'questioning' what was said in Parliament. In no way does he seek, as Blackstone put it in a passage mentioned in the Scientology case, to have proceedings in Parliament 'examined, discussed and adjudged'.

With regard to policy and social reasons, if a publication is proved to refer to the plaintiff in a defamatory way, the law provides various relevant defences to the media - qualified privilege, fair comment, justification. All these defences are pleaded by the defendants here, although it seems that only Wellington Newspapers Limited is prepared, if (contrary to its contention) its articles sued on go as far as to mean that the plaintiff was in fact guilty of fraud, to undertake the burden of proving that meaning to be true. We are not now called upon to determine any question concerning these defences. It is purely a question of reference and meaning - in other words, the interpretation of the alleged libel.

There is no reason of common sense or policy why some artificial legal barrier should be placed in the way of the plaintiff in proving what the public in fact would have understood from what was published to the public. Some would urge that, when issues of genuine public interest are under debate, the principle of freedom of speech should leave the

media more free to defame the plaintiff than has been held to be the case in the past. We are not saying that such should be the law and express no opinion on the issue. There are strong arguments both ways. In their submissions to this Court counsel for the appellants made little attempt to undertake the balancing exercise of showing why the media should be more free to publish untrue allegations than has been the law so far. Assertions that public discussion should be unrestricted have a ready appeal. They may seem axiomatic. But the damage to reputations, through ineradicable but untrue smears, has to be weighed also. It has to be remembered that if the media can prove that what they say is true, they have under the present law nothing to fear. Truth is an absolute defence. It is the right to publish what may turn out to be untrue, or at least unprovable, which lies at the heart of the issue. The media have a big trade in reputations, and to some extent this must be acceptable in a democracy. The question is where the line is to be drawn.

If there is to be a change in the law, drawing the line in a different place in favour of the media, it should be made by way of extending the defences of qualified privilege or fair comment. It is irrational to urge the Court to introduce a defence intended to extend freedom of the media on the artificial basis that the plaintiff will not be permitted to prove that a harmful publication did mean what its readers or hearers understood it to mean. The

argument for the appellants invoking policy is really an invitation to the Court to obscure the true issue of policy by a fiction.

In the result the argument must be rejected. The case reduces at this stage to some quite short points of fact or evidence, to which it is now necessary to turn.

The Alleged Imputations

The publications on which the plaintiff sues occurred on various dates in the month from 26 May to 26 June 1988, most of them in the ten days from 16 to 26 June. Some of them, but by no means all, used the expression 'Gang of 20'. All were published during a period of continual media publicity about that 'Gang' and Mr Peterson's allegations or insinuations. Although some of the publicity included statements by persons in authority belittling Mr Peterson's claims and intended to reassure the public, Mr Peterson remained adamant in his call for an inquiry and his assertions that there was evidence of fraud. During this period Mr Peterson was not entirely a lone voice. Some support, albeit guarded, was given to his campaign by members of the parliamentary Opposition, who criticised the Government for failing to conduct an adequate investigation. An illustration is the Auckland Star report of 20 June 1988 previously quoted. Other support suggesting that he was speaking the truth is illustrated by the letter to the

editor of The Dominion of 25 June 1988 previously quoted. The plaintiff was expressly named in the list of 29 persons published in the media on 8 and 9 June.

The individual newspapers and the Broadcasting Corporation were not responsible for one another's publications, but they were all contributing to keeping a continuing story constantly before the public. The effect of each publication must be considered in the light of the public mind to which each was addressed.

Taking into account the foregoing facts, it is clear that each publication sued on contained material capable of being understood by some reasonable readers or viewers as being a repetition of Mr Peterson's allegations relating to the plaintiff among other persons. It is equally clear that at the very least his allegations were capable of implying that there were substantial grounds for suspecting the plaintiff, among other persons, of fraud. The pleaded innuendoes (c) to (f) inclusive are variants of an innuendo of suspicion. As to each publication, the plaintiff is entitled to have them put to a jury, if the case is tried with a jury.

Whether the same applies to the pleaded innuendoes (a) and (b), which are innuendoes of guilt, is perhaps more arguable, but we have been satisfied by Mr Baragwanath's argument that some reasonable readers or viewers could understand from or be reminded by the terms of each

publication sued on that the plaintiff was a member of the 'Gang of 20' and that this necessarily meant that he was fraudulent. As already said, we think that each publication contained express or implied references to Mr Peterson's allegations to an extent reasonably capable of being regarded as a repetition of them. Moreover, from time to time Mr Peterson made statements going beyond merely the existence of substantial grounds for suspicion and indicating that members of the 'Gang' were guilty. For example, the opening story in the Dominion Sunday Times of 8 May 1988, with its references to scams, is in that category. As late as 26 June 1988, in the material published in the Auckland Star which gives rise to the last pleaded cause of action, Mr Peterson was speaking of 'the damning and indisputable evidence they [journalists] have on the $100 million scam I have uncovered'.

Consequently we hold that Wylie J. came to the right conclusion and for reasons with which we substantially agree. There are some subsidiary points - for example, certain causes of action pleaded include additional innuendoes - but on none of these do we see ground for disturbing the Judge's conclusion and we accept his reasoning without repeating it.

It remains to emphasise two important points. The present decision is simply that the publications were capable of defaming the plaintiff as alleged. At a trial

each will have to be considered separately, in the context of the state of the public mind, and it will be a question for the tribunal of fact (either Judge alone or jury) whether each did have that effect. Arguments that particular publications were in terms too general or too brief to have that effect will remain open to counsel for the defendants, just as counsel for the plaintiff will be able to urge, as they did in this Court, that from 8 June 1988 publications relating to the 'Gang' would inevitably be understood as referring to the plaintiff as a person involved in unlawful conduct.

Similarly, and this is no less important, it may be argued for particular defendants that in the mass of media publicity a particular publication sued on would not itself have added much to the damage to the plaintiff's reputation. That is a question of fact which will fall to be approached at a trial in a commonsense way.

Last it may be as well to repeat that this Court has not been concerned with the various defences of justification, qualified privilege and fair comment.

For these reasons we dismiss the appeals. The respondent will have against each appellant $1000 for costs in this Court together with a sixth share of the reasonable travelling and accommodation expenses of two counsel, to be settled by the Registrar.

Solicitors:
Crown Law Office, Wellington, for Attorney-General
Izard Weston, Wellington, for Wellington Newspapers Ltd
Brookfields, Auckland, for Auckland Star Ltd and
The Sun Publishing Co. Ltd
Simpson Grierson Butler White, Auckland, for Broadcasting
Corporation of New Zealand Ltd
Neumegen & Co., Auckland, for Respondent