1935 *Present :* **Akbar S.P.J. and Poyser J.**

SAMARASEKERA v. URBAN DISTRICT COUNCIL, NEGOMBO.

280—D. C. Negombo, 6,477.

Defamation—Action against Urban District Council—Alleged defamation by members of Council at meeting—Liability of Council—Termination of services—Month's salary in lieu of notice.

An Urban District Council is not liable in its corporate capacity for defamatory words used by some of the members at a meeting, which was convened for the purpose of deciding a course of action within the purview of the statutory powers of the Council, and in the recorded acts of which the defamatory words do not appear.

Where the plaintiff was employed as superintendent of the electrical department of the Council on a salary of Rs. 1,200 a year with allowances, and the salary was to be paid monthly,—

***Held, per* AKBAR J., that the plaintiff was not entitled to more than a month's notice prior to the discontinuance of his services or a month's salary in lieu of notice.**

IN this action the plaintiff sued the Urban District Council of Negombo to recover damages for defamation and wrongful dismissal. The plaintiff was engaged by the defendant Council as superintendent of its electrical department on September 7, 1931. At a meeting on January 18, 1932, the Council resolved to call upon the plaintiff to resign from his post and on the plaintiff's refusal dismissed him on February 13, 1932. The plaintiff stated that the dismissal was wrongful, vindictive, and malicious and also that by reason of the defamatory statements alleged to have been made at the meeting he had been damaged in reputation and in his professional capacity.

It was contended on behalf of the Council that there was no cause of action against the Council for defamation and that no action was maintainable in respect of an imputation involved in a wrongful dismissal.

The learned District Judge awarded plaintiff a sum of Rs. 8,000 as damages.

Hayley, K.C. (with him *N. E. Weerasooria* and *Vandergert*), for defendant appellant.—An action for defamation cannot be maintained without setting forth in the plaint the words complained of—*Odgers on Libel and Slander (5th ed.), ch. 23, p. 623 ; Wright v. Clements*[1]. The plaint must set out the actual words (*ipsissima verba*), and not the substance only—*Roscoe on Pleadings, vol. II. (18th ed.), p. 853.* There can be no judgment where actual words are not so set out.

The Council is not liable for remarks made by members at a meeting. The Judge admits the statements were made on a privileged occasion, but states that malice destroys it. The presence of reporters does not destroy privilege. The presence of third persons with no right to remain does not destroy privilege—*Pittard v. Oliver*[2].

[1] *3 B. and Ald. 506.*

[2] *(1891) 60 L. J. Q. B. 219.*

There are no by-laws made by the Council as to the employment and dismissal of its employees. The Chairman is merely the executive officer of the Council—section 16 (1). No member acted as agent of the Chairman to malign the plaintiff.

A corporation must act by a majority—*8 Halsbury 386.* If the Chairman had the power to dismiss and employ, and he libelled, then clearly he would be liable. Here the Chairman had no power to do so, and hence there is no such responsibility.

There was ample justification for the dismissal of the plaintiff. His conduct was not consistent with diligence and ability. Further, grounds discovered against a servant can be alleged later when found to justify dismissal. The judgment of the District Judge is unbalanced. He has entered into speculations without evidence to support them.

Counsel cited *Turner v. Mason*[1], *per* POLLOCK J.—on employee disobeying orders ; *Harmer v. Cornelius*[2] on lack of skill which an employee should possess ; *Thompson v. British Berne Motor Lorries Ltd.*[3].

The cumulative effect of the grounds of dismissal is very strong.

Re period of notice before dismissal, there are no by-laws of the Council, but the Ordinance seems to contemplate employment of servants by the month—section 47 (*a*). Counsel cited *La Brooy v. The Wharf Lighterage Co.*[4] ; *Forsyth v. Walker & Clark Spence*[5] ; *Sirisena v. Karugama Tea Co.*[6]; *Venables v. Jarvis*[7].

R. L. Pereira, K.C. (with him *H. V. Perera, Dassenaike, Koattegoda,* and *E. S. Fernando*), for plaintiff, respondent.—A corporation is liable for torts committed by its agents (*Kandaswamy v. Municipal Council of Colombo*). The Council is guilty of an *animus injuriandi.* It is not necessary in these circumstances to prove actual malice, but malice will be inferred by law—*Spencer Bower on Actionable Defamation, p. 265.*

Under our law and English law, a corporation may be sued for defamation. If the principal executive officer is the Chairman, then every defamatory statement made by the Chairman in the performance of his duties is actionable.

The charges in this case were set up against the plaintiff by a collective act of the Council. The Council was functioning collectively right through. There is a decision to put the charges to the plaintiff, no resolution by the Council that the allegations are true, but a resolution calling upon the plaintiff to resign—these acts amount to defamation. The resolution pure and simple is not the defamation; the words of the individual members do not form the defamation; but these two things taken together sufficiently constitute a defamation.

If, during the deliberations of a corporation, statements were made by individual members, then the latter only would be liable. But where all the members agreed to discuss in public, there is a defamation by the corporation. If the discussion is authorized to be public, then defamation by a member during such discussion is deemed to be authorized by the Council, and the Council would be liable.

[1] *14 M. and W. 112 at 115.*
[2] *4 Jurist. N. S. Part I., p. 1110.*
[3] *33 T. L. R. 187.*
[4] *34 N. L. R. 85.*
[5] *33 N. L. R. 211.*
[6] *26 N. L. R. 209.*
[7] *3 Menzies Rep. 314.*
[8] *1 A. C. R. 90.*

There can be a collective act of the Council without any resolution. The ultimate liability rests on other factors, *bona fides*, &c.

The contract of employment in this case can be terminated only on reasonable notice. The letter of appointment refers to " an annual salary ". The test would be " how long would plaintiff take to secure employment of a similar kind "—see *Forsyth v. Walker* (*supra*).

There is no difference in this respect between English and Roman-Dutch law. Reasonable notice is decided by custom or by discretion of Court—*vide Gringer v. The Eastern Garage Ltd.*[1] and *Perera v. Theosophical Society*[2]. Where letter of appointment refers to an annual salary, the employee looks to a long term of employment—*Davis v. Marshall*[3]. Where technical training is required, a long period of notice should be given.

Hayley, K.C., in reply.—Though the letter of appointment referred to " an annual salary ", plaintiff was paid monthly. The method of paying the salary is the test—*see La Brooy v. The Wharf Lighterage Co.* (*supra*). No question of reasonable notice comes into cases of monthly service. Section 47 (*a*) of the Ordinance No. 11 of 1920 contemplates employment on a monthly salary.

The facts of this case are against the conclusion that the statements were made after a decision by the Council so to do. One cannot attribute to the Council the expectation that a member is going to libel an individual.

Cur. adv. vult.

August 2, 1935. AKBAR S.P.J.—

This is an appeal by the Urban District Council of Negombo from a judgment condemning the Council to pay the plaintiff a sum of Rs. 8,000 as damages on two causes of action, viz., defamation and wrongful dismissal. It appears that the plaintiff was engaged by the defendant corporation (hereinafter referred to as the Council) as superintendent of its electrical department on September 7, 1931, and at a meeting held on January 18, 1932, the Council resolved to call upon the plaintiff to resign from his post, and when plaintiff refused to do so dismissed him on February 13, 1932. On the count of defamation plaintiff alleged that at the meeting of the Council on January 18, 1932, the Council " in the presence of reporters from the Ceylon press and of some members of the public made allegations against the honesty and efficiency of the plaintiff to the effect that he had in the course of his employment defrauded or attempted to defraud the corporation of moneys belonging to it, and had been incompetent and unskilful in the discharge of his duties. These allegations were false and in the case of some of the members of the corporation who were present on the said occasion were malicious as well ".

I have quoted verbatim from paragraph 4 of the plaint, and in paragraph 5 the plaintiff narrates the circumstances of his dismissal on February 13, 1932. The paragraph ends as follows:—" The plaintiff states that the said dismissal was without a fair inquiry and without an opportunity

[1] *32 N. L. R. 281.* [2] *14 C. L. Rec. 190.* [3] *4 L. T. (N. S.) 216.*

given to him to meet any charges against him and was contrary to natural justice. The plaintiff also states that the said dismissal was wrongful, high-handed, vindictive, and malicious ".

In paragraph 6 the plaintiff based his action not only on the ground of wrongful dismissal but also on the ground that by reason of the defamatory statements alleged to have been made at the meeting of January 18, 1932, " he had been damaged in reputation and in his professional capacity ".

The Council in its answer took three objections in law, viz., (*a*) that a claim on account of defamation cannot be maintained against the Council, (*b*) that the claim on account of defamation cannot be maintained in the absence of averments setting out the defamatory words complained of, and (*c*) that no action or claim is maintainable in respect of imputation involved in a wrongful dismissal. In spite of these objections appearing in the answer the plaintiff took no steps to amend the plaint by stating the exact words said to have been used at the meeting which the plaintiff alleged were defamatory and the case went to trial on 19 issues in which the objections in law, stated by me above, appear.

As regards the objection in law that plaintiff cannot maintain the action on the count of defamation in the absence of averments setting out the defamatory words complained of, appellant's Counsel referred to several authorities. In *Odgers on Libel and Slander (6th ed.), p. 509,* it is stated that " the very words complained of must be set out by the plaintiff in his statement of claim ' in order that the Court may judge whether they constitute a ground of action '—*per* ABBOTT C.J., in *Wright v. Clements*[1] ".

The form of the plaint for actions in defamation given in the schedule to the Civil Procedure Code contemplates the necessity of the actual defamatory words being set forth. It is not necessary, however, to give a decision on this point in this appeal in view of the more serious objection taken by the plea that a claim on account of defamation cannot be maintained against the Council. Whatever the liability of each individual member may be for words used in the course of a meeting or debate of the Council, the question that has to be decided is whether the Council is liable in its corporate capacity for defamatory words used by some of the members during a meeting, even though the meeting was convened for the purpose of deciding a course of action which comes within the purview of the statutory powers of the Council. The discussion took place in committee at the meeting of January 18, 1932, and there is nothing defamatory in the minutes of the meeting or in the letters written by the Council to the plaintiff as a result of the meeting,—see P 5, P 4, P 7, and P 10. P 5 only records the fact that the House went into committee and that a resolution was passed by all the members, except one, giving the plaintiff the option of resigning immediately, and that if he failed to do so his services would be dispensed with. P 7 dated January 25/27, 1932, states that the plaintiff had failed in the discharge of his duties to give satisfaction to the Council and the general public. It adds that the Council resolved to ask the plaintiff to resign " as it is detrimental to the interest of this Council to allow you to remain any longer ". P 10 dated February 13, 1932, forwarded a copy of the resolution passed on February

[1] *3 B. and Ald. 506.*

9, 1932, dispensing with plaintiff's services and a voucher for Rs. 240 being January's salary and allowance and one month's salary and allowance in lieu of notice.

It is clear, therefore, that in the recorded acts of the Council the defamation averred in paragraph 4 of the plaint does not appear. The plaintiff, however, as appears from the evidence (notably that of Dr. Da Brera, a member of the Council and witness for the plaintiff) seeks to make the Council liable for defamatory statements made by the Chairman and some of the members, especially the Chairman, during the discussion in committee. Assuming that such statements were made, is the Council liable in damages to the plaintiff for such spoken words ? There can be no doubt that under our law a corporation can be held to be liable for a delict including defamation committed by its servant or agent acting within the scope of his employment or authority. If there was anything defamatory in the minutes or letters, I have no doubt the Council would be liable. The Council is constituted under Ordinance No. 11 of 1920. The members elect the Chairman under section 16 (1) and he is the executive officer of the Council—see section 16 (3). Chapter II. regulates the proceedings. All acts authorized or required to be done under that Ordinance are to be done by the majority of the members present at a duly convened meeting. It is the resolution of the majority which the law makes the Council responsible for. I cannot see how the Council can be held to be responsible for all the remarks of members who may, for aught we know, form the minority. The plaintiff nowhere in his plaint mentions the person who is said to have made the defamatory statement; nor has he set out the plea that the member who made the statement was an agent or servant of the Council and that he was acting within the scope of his authority or employment at the time. Under section 47 of Ordinance No. 11 of 1920 the Council is authorized to appoint its officers and servants and to remove any officer or servant. Whatever the liability of the member may be for any defamatory statement made by him at a discussion I find great difficulty in attributing liability to the Council for the words used by a member. I do not think the liability becomes any clearer by the contention put forward by respondent's Counsel that as soon as the Council resolved to go into committee the Council assumed liability for every defamatory statement made by any of its members, so long as the public was allowed to be present. It is the dismissal of the plaintiff which Ordinance No. 11 of 1920 authorized the Council to decide on, and not the words used by the members during the discussion in deciding on this question of dismissal. If it were otherwise a Council would be liable in defamation for any defamatory word used by a member during a public discussion on a subject authorized by the Ordinance at a meeting of the Council.

Respondent's Counsel was not able to cite any case in point except the case of *Kandaswamy v. Municipal Council of Colombo* [1]. I sent for the District Court record of the case (D. C. Colombo, 16,535). It is true (as stated by Moncrieff J. in *1 A. C. R. 90*) that the first issue which dealt

[1] *1 A. C. R. (Ceylon) p. 90.*

with the question of law whether the plaintiff can maintain his claim against the defendants included a claim for Rs. 7,500 damages on the ground that the public discussion of the charges against him had injured his good name, reputation, and feelings. But the appeal was from the judgment of the trial Judge dismissing this claim for Rs. 7,500 on the ground that under the Roman-Dutch law a corporation was deemed incapable of *dolus* and could therefore commit no injury. The Supreme Court ruled that an action for a delict could be brought under our law. It only decided this question of law and is no authority for the proposition advanced by the respondent's Counsel. Mr. Justice Moncrieff said as follows during the course of his judgment :—" The act complained of may be the act of those who represent a principal ; but, if it is done within the scope of employment and for the principal's benefit, I see no reason why the principal should escape liability because it is a corporation." The case was sent back for trial. I sent for the original record to find out what took place after the record was returned. Unfortunately the plaintiff took no further steps in prosecuting his claim. It seems to me that on the law the claim for damages based on the count for defamation fails. But as I have come to the conclusion that it fails on the facts too, I think I should state shortly my reasons for that view. The plaintiff was appointed on September 12, 1931, superintendent of the electrical department of this Council on a salary of Rs. 1,200 a year rising by annual increments of Rs. 60 to Rs. 1,800 a year plus a travelling allowance of Rs. 240 a year and rent allowance. In view of the fact that the plaintiff had to take charge of a new department which only came into being on his appointment and that the department was concerned with the supply of electricity to the whole town for the first time, the salary may appear to be inadequate but apparently the supply seems to have been greater than the demand, for there were 62 applicants for the post and a sub-committee was appointed to select a fit person. A great deal of evidence has been led to prove that the Chairman was prejudiced against the plaintiff, which the District Judge has held to be proved. Assuming that he was, the question I have to decide is, was the defamatory statement alleged in the plaint made at the meeting? If so, by whom was it made? and what was the statement ?

Paragraph 4 of the plaint states that at the meeting on January 18, 1932, allegations were made against the honesty of the plaintiff to the effect that he had in the course of his employment defrauded or attempted to defraud the Council of moneys belonging to it. How useful and wise the rule of law is which requires a plaintiff to state the very words of the alleged defamation is seen in this case, for it is only one witness, Dr. Da Brera, witness for the plaintiff, who states that " the Chairman referred to the plaintiff as having received Rs. 7.50 from a Chettiar. The Chairman then stopped and said 'I don't want to go further'. No further questions were put as I took it for granted that he had received Rs. 7.50. I did not question the plaintiff. I took the Chairman's word for it ". Later the witness said: " I did not see D 1. Chairman said Mr. Samarasekera had received Rs. 7.50 from the Chetty, and stopped

there. This letter if it was produced at the meeting would have made me think differently—mine is but a recollection". In re-examination Dr. Da Brera said: "Chairman said, plaintiff has taken Rs. 7.50 from the Chetty, well, well I don't want to say more". If this is the slander complained of the plaint not only omits to set forth these words; but (as the words are not *per se* defamatory) it fails to set forth the *innuendo.*

All the other witnesses deny that that there was any imputation of dishonesty by the Chairman as regards the Chetty's letter (see D 1 and D 2). As a matter of fact D 2 was on the agenda for the meeting (see P 18, item 34). Anyone reading D 1 and D 2 will see at once that no question of plaintiff's dishonesty could arise over the Chetty's letter. Both Messrs. Quentin Fernando and Austin Fernando, members of the Council, called as witnesses for the plaintiff, deny that any allegation was made by the Chairman as regards the Chetty's matter. We have only the evidence of Dr. Da Brera on the point and if his evidence is examined with some care doubts will begin to assail any one doing so. He seems to have had differences with the Chairman on matters connected with the Council and it was he who came with Martin who had already sent letter D 9. The plaintiff had brought a charge of theft of electricity against Thomas David, and David's letter D 8 (see also D 7) was on the agenda (see P 18, item 13). D 9 was not on the agenda, but Dr. Da Brera came to the meeting of January 18, 1932, with Martin and it was he who said that there was a serious complaint by Martin and suggested that the Council should go into committee to consider the complaint. The plaintiff was sent for and questioned for nearly an hour and questions regarding Martin's complaint were put by Dr. Da Brera to the plaintiff. When the house resumed Dr. Da Brera voted for the resolution that plaintiff should be asked to resign and also on February 9 for the plaintiff's dismissal. And yet when giving evidence for the plaintiff he confessed to the Court as follows:—"I cannot say that the two charges which involved dishonesty are false—because they have not been proved to be false. I say that our resolution to have the plaintiff dismissed was moved in a hurry. Quite recently about a month or two ago I stressed this point before the members of the committee that it was my opinion that we have been hasty in dismissing the plaintiff. This was after this case began. I say that we should have held a better inquiry and given the plaintiff more chance".

Dr. Da Brera's evidence on this point when closely scrutinized is unsatisfactory, and in spite of the trial Judge's finding it is doubtful if the Chairman made use of the words complained of. As I have said all the other witnesses contradict him on this point and the cross-examination of the doctor shows how reluctantly he admitted that he had met Martin accidently and had been told about his complaint. It is not difficult to see where the truth lies if one compares his evidence with that of Martin. As stressed by defendant's Counsel it does not matter at all so far as the defendant's case is concerned whether Martin's complaint was true or false, for if it were false the charge of defamation would be against Martin and not against the Council. But the fact remains that plaintiff denied the receipt of M. G. Perera's quotation and Lennie de Silva's letter when

he was questioned at the meeting of January 18 and that he was contradicted by his own clerk Michael Perera and the Inward Register. The fact also remains that in cross-examination during the trial he admitted that he had read Lennie de Silva's letter. So that it will be seen that at the meeting the only charges which could be construed as imputing dishonesty to the plaintiff were—(*a*) the Chetty's letters (D 1 and D 2) on which point there is only the evidence of Dr. Da Brera contradicted by the evidence of the others, (*b*) the charge against the plaintiff relating to M. G. Perera's letter which was a charge made by Martin and not by the Council and which the Council inquired into at the request of Dr. Da Brera. These are my reasons for thinking that the defamation alleged in the plaint so far as the imputation of dishonesty is concerned has not been made out, as a matter of fact, against even any member of the Council.

The defendant in paragraph 7 of his answer gives 12 instances of misconduct, negligence and incompetence, some of which had been considered by the Council at the meeting of January 18, 1932, to justify the dismissal of the plaintiff. Charge 7 (*d*) to the effect that he had left service wires of connections unprotected by insulating material was admitted by him. His excuse was that there was no insulating wire in the Council stores at the time. He had found no difficulty in getting 14 coils of insulated wire on September 25, 1931. He could easily have obtained more if he had requisitioned for it, but he preferred to use bare wire thus endangering public safety.

Charge 7 (*e*) was also admitted by him. By resolution of Council plaintiff was directed to prepare estimates for correcting the errors indicated in charge 7 (*d*) but he took no trouble to do so.

Charge 7 (*f*) was also admitted by the plaintiff, his excuse being that he had no porcelain tubes. If he had none he should have asked for them. Similarly charges 7 (*i*) and 7 (*k*) and 7 (*l*) were proved and the plaintiff had no answer to these charges. These are some of the charges the Council raised in their answer to justify plaintiff's dismissal and they were all admitted by the plaintiff. When he was appointed he had only 2 wiremen and 2 coolies and an inexperienced electrical clerk. Instead of organizing his department and insisting on having a proper staff, he apparently took no trouble to enlighten the Council on a subject in which he was supposed to be the expert. Instead of taking a firm attitude he wrote letter P 2 to the Council that part of his work should be given out on contract; when this was not sanctioned by the Council and he was asked to take in more men, he took in about a dozen workmen and found that he could not cope with the work, and part of the work had to be given out on contract later.

In my opinion there was ample evidence to justify the Council's dissatisfaction with the manner in which the plaintiff was carrying out his duties and the Council was justified in dismissing him. Even if they were not so justified, the question arises whether the month's salary which was paid to the plaintiff in lieu of notice was not sufficient in law for the termination of plaintiff's contract.

The learned District Judge has held that plaintiff was entitled to six months' notice. His letter of appointment P 1 gives the plaintiff's

salary as Rs. 1,200 a year, and the increments were Rs. 60 per year, but the evidence shows that plaintiff was paid monthly. Many authorities were cited by Counsel on both sides, but I need however only refer to (*Forsyth v. Walker & Clark Spence*[1] and *Beveridge v. Boustead* referred to in *Labrooy v. The Wharf Lighterage* Co.[2]). In the former case Macdonell C.J. stated that in the absence of a period of notice fixed by the contract and evidence of any custom indicating what the period of notice should be, the employee was entitled to reasonable notice. *Beveridge v. Boustead*[3] is a case more or less in point as that too was the case of an engineer and a month's notice was held to be sufficient. There is, in my opinion, an indication in section 47 of the Ordinance No. 11 of 1920 under which the Council employed the plaintiff that the contract should be a monthly contract. Section 47 (*a*) says that the Council may appoint its servants and assign to such service such salary as it may think fit. But where the salary exceeds in value the rate of Rs. 100 per month the approval of the Local Government Board had to be previously obtained for such assignment.

In all the circumstances of this case I am of opinion that the plaintiff was not entitled to more than a month's notice. To sum up my conclusions my finding is that the Council is not liable on the count of defamation, and as regards the count of wrongful dismissal the Council was justified in dismissing the plaintiff on February 13, 1932. Even if the Council was not so justified the plaintiff was not entitled to more than a month's notice or one month's salary and allowance in lieu of notice. The decree appealed from is set aside and plaintiff's action dismissed with costs in both Courts.

POYSER J.—

There is no necessity to recapitulate the facts in this case as they are fully set out in the judgment of my brother Akbar J.

In regard to the damages awarded to the respondent the District Judge, at the conclusion of his judgment, stated he would have awarded him the whole amount he claimed, viz., Rs. 10,000, "were it not for the fact that it was argued that he was entitled to at least two years' salary as damages for wrongful dismissal, but as he has only awarded him six months' salary as damages, the claim will be reduced by Rs. 2,000 ".

The learned trial Judge apparently therefore, as the respondent received from the appellant Council one month's salary and allowances in lieu of notice, viz., Rs. 120, has awarded the respondent Rs. 600 for wrongful dismissal, and Rs. 7,400 as damages for defamation.

There appears to be no doubt that under the Roman-Dutch law a corporation can be held liable for defamation, in fact there was no argument adduced to the contrary. That being the case, the defendant Council would be liable for damages, if they had expressly authorized or directed the publication of defamatory statements of the plaintiff, or, if such statements were published by its servants or agents, in the course of and within the scope of their employment, without any actual authority express or implied from the Council. See *Citizen's Life Assurance Company Limited v. Brown*[4].

[1] *33 N. L. R. 211.*
[2] *34 N. L. R. 85.*
[3] *S. C. M. of 5.12.98.*
[4] *(1904) Law Rep. App. Cases p. 423.*

I fail to see, however, how the Council can possibly be held liable for the statements of members made during a meeting of the Council, for such statements cannot be said to be authorized by the Council.

A member of the Council might, under certain circumstances, be held liable for defamatory statements he made at a meeting of the Council at which the public were present, but that question does not arise in this case.

The averments in the plaint in regard to defamation were extremely vague, but I agree with my brother that it is not necessary to give a decision on the defendant's objection that the plaintiff cannot maintain the action on the count of defamation as the defamatory words complained of were not set out in the plaint.

The question whether the plaintiff can succeed in his claim for defamation can, in my opinion, be shortly determined by considering whether the evidence supported the District Judge's findings on the issues framed in regard to this part of his claim. The following are the material issues in regard to this point:—

1. Did the defendant Council at a meeting held on January 18, 1932, at the Urban District Council Office in the presence of press reporters and other members of the public state that—
   (*a*) That the plaintiff in the course of his employment defrauded and attempted to defraud the defendant Council of monies belonging to it?
   (*b*) That the plaintiff was incompetent and unskilful in the discharge of his duties as electrical superintendent?

The District Judge has answered all the issues in favour of the plaintiff. In my opinion, there was no evidence before him of any defamatory statements made or authorized by the Council or its agents or servants.

There is no defamatory statement contained in the minutes of the Council or in its letters or resolutions. Further, even if the Chairman, in regard to the Chetty's Rs. 7.50, did make a defamatory statement concerning the plaintiff, I fail to see for the reasons previously stated how the Council can be held liable for such statement.

There was consequently, in my opinion, no evidence to support the District Judge's findings on the issues above set out or the following passage in his judgment at page 356:—

> "In any event I have come to the unfortunate conclusion that the meeting did not fully and properly consider the question of the plaintiff's dismissal and that on the other hand, they libelled him without any just cause, slandered him in his profession, and nipped his career in its very bud . . . ."

The plaintiff consequently, in my opinion, fails in his claim for defamation.

In regard to the damages awarded by the District Judge in respect of wrongful dismissal, the Roman-Dutch law on the subject appears to be very similar to the English law (cf. *Maasdorp, vol. III., p. 246,* and *Halsbury's Laws of England, vol. XX., p. 98*).

In this case, if the plaintiff habitually performed the skilled work for which he had been engaged so carelessly as to materially interfere with the smooth working of the business in which he is employed, he could rightfully be dismissed. (*Maasdorp* (*supra*).)

There was, in my view, abundant evidence of the plaintiff's incompetence and habitual carelessness. Such evidence is referred to in detail in my brother's judgment and I agree with him and for the reasons he has stated that the Council was justified in dismissing the plaintiff.

I have some doubt in regard to what notice the plaintiff would be entitled to, but as I have formed the opinion that he was rightfully dismissed, it is unnecessary to consider this point.

I agree that the plaintiff's action should be dismissed with costs in both Courts.

Appeal allowed.