WRIGHT v. CANNELL.

1943. In Banco : Jordan C.J., Maxwell and Roper JJ.

Sept. 2, 3, 22, 1943

International law - Jurisdiction - Residence - Agent of foreign sovereignty - Immunity from civil process. Defamation - Absolute privilege - Statement concerning civilian made by member of forces in course of duty.

A state which admits to its territory an armed force of a friendly foreign power impliedly undertakes not to exercise any jurisdiction over the force collectively or its members individually which would be inconsistent with its continuing exist as an efficient force available for the service of its Sovereign. The State, quoad the visiting force, must be deemed to valve any provisions of its immigration laws which would be inconsistent with the visit, and any laws prohibiting the carriage of arms or the wearing of uniforms other than its own. It must also be deemed to concede to those in command of the force all authority necessary to maintain discipline over its members, and to agree to refrain from itself interfering in purely disciplinary matters and in a limited class of matters constituting criminal offences committed by one member of the force against another. The immunity does not extend to a member of the force in respect of debts contracted to local civilians or civil wrongs which he may have committed to their injury.

A statement made by a member of such a force in the course of his duty, which contains defamatory reference to a civilian, is not the subject of absolute privilege.

DEMURRER.

The following statement of facts is taken from the judgment of his Honour the Chief Justice :- In this action, a summons to strike out pleas was referred to this Court by a Judge in Chambers. It being obvious that the questions sought to be debated could not usefully be examined in such an application, the course has been taken of amending the declaration and the pleas, and of the plaintiff then entering demurrers. The matter has been argued upon the demurrers.

In the present form of the proceedings, it is alleged by the first count of the declaration that the plaintiff is a master mariner who commanded in the employment of the transportation service of the United States Army Services of Supply a ship called "U.S.S.Lorimar", and that the defendant, who was a British subject serving in the naval forces of His Majesty and paid by the Australian naval authorities, spoke and published to and of him in a public street in the presence and hearing of members of the public the words "You have been drinking and have no business to bother with the crew". The second count alleges that the defendant published another slander of and to the plaintiff in the defendant's office in the presence and hearing of a stenographer and a man both of whom were British subjects. The third count alleges that the defendant published a libel of the plaintiff by issuing a document containing the words "Reason for discharge - drunkenness" (these words referring to the plaintiff).

The relevant pleas are the second and fourth. By the second, it is alleged that at all material times armed forces of the United States of America, a sovereign State in alliance with the King, were with the consent and permission of the King within his Dominions and engaged in the prosecution of a war in which both Sovereigns were engaged, that the defendant was employed by the said United States as officer in charge of the Classification and Assignment Unit of the Small Ships Section of the United States Army Transportation Service, which unit, section and service were branches of the said forces of the said United States so present and engaged, that the defendant was employed in duties relating to the appointing and discharging or procuring the discharge of the personnel of ships for use by the said armed forces, that in the said employment and performance of the said duties the defendant was bound to and did obey the orders and commands of officers of the said armed forces and was under the control of the said United States through the said officers a nd acted as agent and servant of the said United States, and that he did the acts complained of in the course and for the purposes of the said employment and in the performance of the said duties and while so bound and so acting and not otherwise. The fourth plea repeats the second, with the addendum that the United States has not consented to the exercise of jurisdiction by any Court of this State or the Commonwealth in respect of any of the matters complained of. It is to these pleas that the plaintiff has demurred on them ground that they confess but do not avoid.

Windeyer K.C. and Bridge , for the plaintiff.

Weston K.C. and Sugerman , for the defendant.

cur. adv. vult.

Sept. 22.

JORDAN C.J. (after stating the facts, continued:) For the defendant it has been submitted that by virtue of a rule of international law which is part of the local municipal law he is immune from the exercise of jurisdiction by Courts either of this State or the Commonwealth of Australia, completely immune or at any rate immune upon the facts pleaded. Alternatively, it has been submitted that if jurisdiction is exercisable by this Court, it follows that if the allegations in the second plea can be made out, each of the allegdd acts of defamation complained of occurred upon an occasion of absolute privilego.

It becomes necessary, therefore, to consider the extent to which by the law of this State the local sovereign refrains from exercising jurisdiction over a foreign sovereign, its agents and agencies when these are within State territory. It is beyond question that a Sovereign power possesses and may exercise complete jurisdiction over its territory and territorial waters, including any person and any thing for the time being within them, and that it is for it and it alone to decide whether in any case or class of case it will refrain from exercising its jurisdiction. There are, however, certain rules of International Law by which Sovereigns allow certain exemptions from the exercise of their territorial jurisdiction to visiting Sovereigns, and to certain of the agents and agencies of foreign Sovereigns. By the law of England and of this State, international law is recognised as part of the local law save to the extent to which it is inconsistent with that law. Since in the present case it is international law by which the claim of the defendant to complete immunity from the exercise of jurisdiction is sought to be supported, it is necessary in the first instance to consider whether there is a rule of international law applicable to the type of case now before us, and, if so, what that rule is, and whether its operation here would be inconsistent with the municipal law. The general principles are undoubted. They were formulated by Marshall C.J. in the celebrated case of Schooner Exchange v. McFaddon (1812 7 Cranch 116.) in a judgment the authority of which has long been recognised by British Courts and was recently re-affirmed by the Judicial Committee of the Privy Council in Chung Chi Cheung v.R (2).

(2) (1939) A.C. 160

Their scope is less certain. There is no doubt that complete immunity from the exercise of jurisdiction is accorded to a visiting Sovereign and to the diplomatic representatives of a foreign Sovereign and the members of their suites. On the other hand, there is no general rule of international law conferring immunity upon the trade representatives of a foreign Sovereign so that Consuls can claim no immunity other than such, if any, as may be conferred upon them by properly implemented treaties. And it is open to question whether a ship owned by a foreign sovereign and used by it for the purposes of ordinary trade is entitled to any immunity: Compania Naviera Vascongado v. S.S.Cristina(1). In the present case we are concerned with the position of the armed forces of ~~the~~ one Sovereign when within the territory of another with that other's consent. The method of approach is indicated by the speech of Lord Macmillan in the case just cited(2):

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"It is an essential attribute of the sovereignty of this realm, as it is of all sovereign independent States, that it should possess jurisdiction over all persons and things within its territorial limits and in all causes civil and criminal arising within these limits. This jurisdiction is exercised through the instrumentality of the duly constituted tribunals of the land. But just as individuals living in a community find it convenient to submit to some diminution of their freedom of action in favor of their fellow-citizens, so also the Sovereign States which constitute the community of nations have been led by courtesy as well as by self-interest to waive in favour of each other certain of their sovereign rights. The extent of these mutual concessions and their recognition is primarily a matter of international, not of domestic, law, and as must necessarily be the case with all international law, which has neither tribunals nor legislatures to define its principles with binding authority, there may be considerable divergence of view and of practice among the nations. Hence, when questions involving international law arise in the domestic Courts of a State problems of great difficulty and gravity may emerge.

'It is a trite observation that there is no such thing as a standard of international law extraneous to the domestic law of a kingdom, to which appeal may be made. International law, so far as this Court is concerned, is the body of doctrine regarding the international rights and duties of States which has been adopted and made part of the law of Scotland'.

These are the well-chosen words of Lord Dunedin, when Lord President of the Court of Session in Scotland, in accase which raised important issues of international law: (Mortensen v. Peters).

'Now, it is a recognised prerequisite of the adoption in our municipal law of a doctrine of public international law that it shall have attained the position of general acceptance by civilised nations as a rule of international conduct, evidenced by international treaties and conventions, authoritative text-books, practice and judicial decisions. It is manifestly of the highest importance that the Courts of this country before the they give the force of law within this realm to any doctrine of international law should be satisfied that it has the hall-marks of general assent and reciprocity".

standpoint

It is from this ~~xxxxx~~/that I approach the matter. For the defendant, some of the observations of Marshall C.J. in Schooner Exchange v. McFaddon (3) were specially stressed, in particular the following:

"A third case in which a sovereign is understood to cede a portion of his territorial jurisdiction is, where he allows the troops of a foreign ~~xxxxxx~~ Prince to pass through his dominions. In such case, without any express declaration waiving jurisdiction over the army to which this right of passage has been

(1) (1938) A.C. 485 (2) (1938) A.C. at 496-7
(3) (1812) 7 Cranch 116.

granted, the Sovereign who should attempt to exercise it would certainly be considered as violating his faith. By exercising it, the purpose for which the free passage was granted would be defeated, and a portion of the military force of a foreign independent nation would be diverted from those national objects and duties to which it was applicable, and would be withdrawn from the control of the Sovereign whose power and whose safety might greatly depend on retaining the exclusive command and disposition of this force. The grant of a free passage, therefore, implies a waiver of all jurisdiction over the troops during their passage, and permits the foreign general to use that discipline, and to inflict those punishments which the government of his army may require".

It was contended that by this the learned Chief Justice meant that the territorial sovereign by consenting to the entry of friendly armed forces impliedly promises to waive jurisdiction with respect to all breaches of the local, civil, or criminal law which may be committed by any member of these forces no matter in what circumstances. In this connection, it is salutary to keep in mind the observation of Lord Halsbury in Quinn v. Leathem (1) that "every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found." The question with which the Chief Justice was concerned was whether a foreign ship of war was liable to be attached at the suit of a claimant alleging title against the foreign Government. It was pointed out in another passage (2) that it was impossible to conceive " that a Prince who stipulates a passage for his troops, or an asylum for his ships of war in distress, should mean to subject his army or his navy to the jurisdiction of a foreign Sovereign". This, and the reference, in the passage relied on, to the seriousness of withdrawing from the control of the sovereign a portion of his military force on the retention of the exclusive command and disposition of which his power and safety might greatly depend, suggest that what the learned judge had in mind was exercise of jurisdiction which would prevent the troops from acting as a force - something analagous to preventing a ship of war from being in a position to act as such, including interference by local courts with the maintenance of discipline - not exercise of jurisdiction over individual soldiers in respect of liabilities incurred or wrongs done perhaps out of all connection with their military duties. It has been contended, however, for the defendant that individual members of the forces are entitled to complete immunity, in its widest sense, from the jurisdiction of the territorial sovereign. From this it would follow that if a member of a friendly foreign force, stationed in a capital city for the performance of military duties on lines of communication, chose, for his greater comfort during hours of relaxation, to provide himself with a flat and a housekeeper to look after it, if he failed to pay rent, wages or butcher's bills, , or if in the course of an evening stroll he assaulted a citizen whom he conceived to have insulted him, the injured parties would have no redress in the civil courts. The landlord could take no proceedings to eject him from the premises, the housekeeper could not sue for her wages, nor the butcher for his bill, nor would any action lie in tort. Since civilians have no recourse to courts martial, presumably they would have no legal redress whatsoever; although they might of course endeavour to convince some superior officer of the justice of their claims, in the hope that he might bring his influence to bear upon the culprit. We have not been referred to any decided case which lends support to such a proposition. References to certain author-

(1) (1901) A.C. 495 at 506 (2) (1812) 7 Cranch at 143

ities, the full reports of which are not very accessible, will be found in a learned article by Colonel A. King, intituled "Jurisdiction over friendly foreign armed forces" in 36 American Journal of International Law", 539 (1942)/. Of these, the Casa Blanca case, decided by the Permanent Court of Arbitration at The Hague, does not touch the point. It was concerned with the right of a military force to control deserters, and the question did not arise between that force and the territorial Sovereign, but between it and a rival intruder which asserted a competing jurisdiction based on a claim that the deserters were its nationals. Tucker v. Alexandroff (1) is of no assistance. There the question was whether the civil courts would lend their aid to restoring a deserter to a visiting foreign force. It was held by a majority that they would but only because a treaty between the United States of America and Russia was construed as so providing. It is to be observed that the Court (2), in dealing, in the light of Schooner Exchange v. McFaddon (3), with the power of the officer in charge of the foreign force himself to arrest a deserter in the absence of treaty rights, expressed itself in the most guarded terms and would not commit itself further than to say that he might perhaps do so dum fervet opus. In the Republic of Panama v. Schwartfiger, it was held by the Supreme Court of Panama that a soldier of the United States Army, who whilst driving an ambulance on duty in Panama had killed a civilian, was not liable to criminal prosecution before the Courts of Panama. The Supreme Court in its reasons cites with apparent approval dicta which, if taken literally, point to complete immunity, but its decision seems to have been actually based on a treaty made between the United States of America and the Republic in 1903 by virtue of which the United States was authorised to maintain military forces in Panama which, when acting on behalf of the United States, were to be subject to the authority and jurisdiction to which they belonged, and not to the national authority (21 American Journal of International Law, 182 (1927)). Similarly, the case of Ayrana v. John is of no assistance. There, a British soldier whilst driving a vehicle on duty in Egypt injured the plaintiff, who sued, not the soldier, but the British Commander-in-Chief, in an Egyptian court, which held itself to be without jurisdiction, apparently on the basis of a custom obtaining between Great Britain and Egypt.

I turn now to textbooks, , but little comfort and no unanimity is to be found in them. Wheaton states in general terms that a foreign army stationed in the territory of a friendly State is exempt from the civil and criminal jurisdiction of the place. In this he is followed by Westlake. Hall is less definite. Lawrence says that the immunity of foreign troops from the local law only exists so long as they remain within their own lines or ~~xxxxxx~~ are away on duty. Oppenheim expresses a similar opinion, and states that immunity does not apply if, for example, soldiers of a foreign garrison leave the rayon of the fortress not on duty but for recreation.

International treaties and conventions remain another possible source of enlightenment. There is no general international convention on the subject; but there are certain significant particular agreements. No light is supplied by the Visiting Forces (British Commonwealth) Act, 1933 (23 George V, Chapter 6), as this is concerned with domestic arrangements within the British Empire. But the Allied Forces Act, 1940 (3 and 4 George VI., chapter 51) is of great importance for the purposes of the matter now before us. Section 1 (1) provides that where any naval, military or air forces of any foreign Power allied with His Majesty are for the t time being present in the United Kingdom or on board any of His Majesty's ships or aircraft, the naval, military and air force courts and authorities of that Power may, subject to the provisions of this Act, exercise within the United Kingdom or on board

(1) (1901) 183 U.S. 424 (2) (1901) 183 U.S. at 433
(3) (1812) 7 Cranch 116.

any such ship or aircraft in relation to members of those forces in matters concerning discipline and internal administration, all such powers as are conferred upon them by the laws of that Power; and subs. (2) enables a foreign authority to be authorised to confer upon military courts power to secure the discipline and internal administration of such foreign forces. Section 2 provides (inter alia) that nothing in the foregoing section shall affect the jurisdiction of any civil court of the United Kingdom or of any colony or territory to which that section is extended, to try a member of any of the naval, military or air forces mentioned in that section for any act or omission constituting an offence against the law of the United Kingdom, or of that colony or Territory, as the case may be. On 27th. July, 1942, an interchange of notes took place between the Governments of Great Britain and that of the United States, by which it was arranged that service courts and authorities of the United States forces should, during the continuance of the present war, exercise exclusive jurisdiction in respect of criminal offences committed in the United Kingdom by members of those forces, the United States military and naval authorities assuming the responsibility of trying, and on conviction punishing, such offences. In the British Note, it was pointed out that these arrangements involved a very considerable departure from the traditional system and practice of the United Kingdom. In the result, on 6th. August, 1942, the United States of America (Visiting Forces) Act, 1942, was passed implementing this arrangement, which is set out in a schedule. In Australia, similar provision to that of the British Act of 1940 was made by National Security (Allied Forces) Regulations (S.R.No. 302 of 1941), on 17th. December, 1941. By an amendment made on 27th. May, 1942 (S.R.No.241 of 1942) which was itself amended on 20th. October, 1942 (S.R.No.457 of 1942), Regulation 6 was introduced providing that notwithstanding Regulation 4 (which corresponds with S. 2 of the British Act of 1940) where any member of the United States forces in Australia is arrested or detained on a charge of having committed or is summoned, charged, or otherwise proceeded against for having committed, an offence against the law of the Commonwealth or of any State or Territory of the Commonwealth, the appropriate officer of the United States forces shall be notified and, if he so requests, (a) if the member has been so arrested or detained, the member shall be handed over to him; or (b) if the member has been so summoned, charged or otherwise proceeded against, further proceedings in respect of the offence shall be stayed, and the member shall thereupon cease to be subject to the jurisdiction of the criminal courts in Australia, and the appropriate naval or military court constituted in accordance with the law of the United States of America applicable to the United States forces in Australia may exercise in relation to the members such powers as are conferred upon it by that law. It is evident that these provisions do not involve the recognition by Great Britain and the Dominions of any such rule of complete immunity as has been here contended for, and do not constitute a regulation of the incidents of such an immunity conceded to be otherwise existing. They are expressly stated to be a departure from traditional system and practice. The jurisdiction of civil, that is municipal, courts to try members of the visiting forces for offences is in the first instance treated as existing and stated not to be affected. So far as Australia is concerned, the jurisdiction of civil courts over a member of the United States forces is interfered with only to the extent that if he is charged with an offence against the law of the Commonwealth or a State or territory, and the appropriate United States officer so requests, he ceases to be subject to the municipal criminal courts and becomes subject to the appropriate United States naval or military court. No derogation from the jurisdiction of the municipal courts in non-criminal matters is contemplated or provided for.

It is clear from the foregoing that the doctrine of complete immunity which has been contended for on behalf of the defendant is not only completely lacking in what has been described as "the hallmarks of general assent and reciprocity", but is also

inconsistent with the implications of local legislation.

It is necessary to consider ~~mmk~~ whether there is any more limited right of immunity, accorded by international law and not inconsistent with the law of this State, available to the defendant and sufficient for his purpose. In this connection, it is useful to return to the fountain-head, the judgment of Marshall C.J. in Schooner Exchange v. McFaddon (1). An examination of this shows that the principle upon which the Chief Justice based the immunities therevformulated was that of an implied obligation not to derogate from a grant. A State which admits to its territory an armed force of a friendly foreign power impliedly undertakes not to exercise any jurisdiction over the force collectively or its members individually which would be inconsistent with its continuing to exist asan effisient force available for the service of its Sovereign. In stating that all exemptions from territorial jurisdiction must be derived from the consent of the Sovereign of the Territory, the Chief Justice expressly stated (2), in reference to the case in which the consent is implied, that the extent of the consent to exemptions "must be regulated by the nature of the case, and the views under which the parties requiring and conceding it must be supposed to act". Approaching the question from this point of view, it is reasonably plain that the local sovereign, quoad the visiting force, must be deemed to waive any provisions of its immigration laws which would be inconsistent with the visit, and any laws prohibiting the carriage of arms or the wearing of uniforms other than its own. It must also be deemed to concede to those in command of the force all authority necessary to maintain discipline over its members, and to agree to refrain from itself interfering in ~~any~~ purely disciplinary matters, and, in some cases at any rate, in matters which are not merely disciplinary, but constitute criminal offences committed by one member of the force against another.This appears to be recognised by the decision of the Privy Council in the case of Chung Chi Cheung v. R. (3), where the territorial court was regarded as possessing jurisdiction to try for murder a member of the crew of a foreign warship, who had killed the captain in territorial waters, only because the foreign Sovereign had refrained from claiming to exercise jurisdiction and had impliedly consented to its exercise by the territorial court. It is obvious that discipline could not be maintained if, when a member of the force had been confined to barracks, a local court would entertain an action by him against his superior officer for false imprisonment. But I am unable to see any principle, and there is certainly no authority, which supports the proposition that a member of such a force cannot be sued in the territorial courts for debts which he may have contracted to local civilians or civil wrongs which he may have committed to their injury. In this connection it may be noted that it has been held by the High Court of Australia that a member of the Commonwealth forces may be prosecuted in a State court for an offence against the traffic laws of the state committed whilst he was in the course of his duty, notwithstanding that the defence power is exclusively vested in the Commonwealth : Pirrie v. McFarlane (4). The case of the commission of a criminal offence by a member of the forces of the United States of America is now expressly provided for by National Security Regulation; but it can hardly be argued seriously that the existence or efficiency of these armed forces now present in this country is imperilled if an individual member is subject to civil process in respect of a civil liability which he has contracted to a citizen in respect, for example, of injury which he has caused by negligence either when off duty or whilst performing military duty in a place far removed from the fighting lines.

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(1) (1812) 7 Cranch 116 (2) (1812) 7 Cranch at

(3) (1939) A.C. 160 (4) (1925) 36 C.L.R. 4 Australia

There remains the last contention, that the facts set up by the second and fourth pleas show that the occasions of the publication of the ddfamatory matter complained of were all occasions of absolute privilege. It may be mentioned in passing that, privilege being raised by the general issue, it would seem since s. 86 of the Common Law Procedure Act, 1899, is expressed in the alternative, t that in strictness a defendant cannot, without leave, plead the general issue along with an argumentative plea amounting to it, or a particular traverse comprised in it: Bullen and Leake, 3rd. Edition, 461. Indeed absence of jurisdiction may be raised by the general issue : ibid. 628-9 . This, however, is a mere technicality of no practical importance. A special plea amounting to the general issue is allowable in cases where it involves such matter of law as might be unfit for the decision of a jury: Stephen on Pleading, 6th. Ed., 338-9. In the present case, it was highly convenient that the point should be raised specially. Since no objection has been taken it may be presumed to be consented to; and, in any event, since the point is being argued on demurrer, the fact that the general issue is also on the file is not now before us.

theIt is to be noted that what is alleged by the pleas the subject of/demurrers is that the defendant is an officer of the armed forces of the United States of America here present and that he did the act complained of in the course of and for the purposes of his duties as such. It is not alleged that the plaintiff was also a member of those armed forces. So far as appears, he was a civilian employed by them, and the defendant, in the course of dealing with him in relation to this employment, must be taken, for the purposes of the demurrers, to have maliciously defamed him. The fact that the defendant is a British subject is immaterial, since it is admitted for the purposes of the demurrers that he is an officer of the armed forces of the United States: Chung Chi Cheung v. R.(1). In my opinion, such an occasion is not one of absolute privilege. The case relied on for the proposition that it is was Dawkins v. Lord Paulet (2). In that case, an action of libel was brought against an army officer because in making to his superior officer a report upon the plaintiff (a subordinate officer) which it was his duty to make, he had adversely criticised him. Mellor J. stated, as one of his reasons for holding that a report of this kind was absolutely privileged, that such a rule was necessary for the proper maintenance of military discipline within the army. This is an entirely different case. The defendant is not alleged to have defamed another member of the forces in the course of making a report about him which it was his duty to make, but to have defamed a civilian whilst doing something in the course of his duties. In my opinion there is no warrant either in principle or authority for extending absolute privilege to such a case as this: cf. Gibbons v. Duffell.(3)

For these reasons, I am of opinion that there should be judgment for the plaintiff on the demurrers.

MAXWELL J.: I have had the advantage of reading the judgment of the Chief Justice, in which I concur. I find it neither necessary nor desirable to add to His Honour's reasons just published.

ROPER J. I agree with the Chief Justice, and for the reasons which he has set out in his judgment, that there is no rule of international law which has been, or is so established as to be proper to be, adopted in our law conferring absolute immunity from the process of our courts on the individuals who are members of the armed forces of a friendly foreign sovereign when those forces are passing through or happen to be in this State with the consent or at

(1) (1939) A.C. 160 at 176 (2) (1869) L.R. 5 Q.B. 94
(3) (1932) 47 C.L.R. 520;
7 Australian Digest 398

the invitation of His Majesty in right of this State. I also agree that the limited immunity which must be implied from the consent to the presence of such armed forces in the State does not extend to protect the defendant in the circumstances pleaded, assuming him to be a member of the armed forces in question. I also agree that the plea, assuming him to be such a member, does not give rise to a valid claim for absolute privilege.

The only matter in respect to which I find it necessary to express ~~express~~ a separate opinion is that as I read the plea it does not allege that the defendant is a member of the armed forces of the United States of America. It does allege that he was employed by the United States of America as officer in charge of a certain department or branch of those armed forces; but the language of the plea appears to me to draw a distinction between his position and that of officers of the armed forces. It is obvious that the American armed forces passing through or stationed ~~dh~~ this State may find it necessary to use the servides of members of the civilian population of the State of of the Australian army or navy. Persons whose services are so used do not merely from their employment become members of the American armed forces. Reading the plea against the pleader, or perhaps as he intended it, I think that immunity or privilege is claimed for the defendant, not as a member of the armed forces, but as an employee of the United States of America, the terms of whose employment required him to act upon the direction of officer of the armed forces.

If this view of the pleading is correct the reasoning of the Chief Justice, with which I agree, applies a fortiori to show that no case of immunity or absolute privilege is raised by the plea and consequently I agree that there should be judgment for the plaintiff on the demurrer.

Judgment for plaintiff on demurrer.

Solicitor for the plaintiff: Simon Burns.

Solicitors for the defendant: Dibbs, Crowther and Osborne.