



Case No: HQ02X01733

Neutral Citation No: [2003] EWHC 1162 (QB)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 May 2003

Before :

THE HONOURABLE MR JUSTICE EADY

Between :

HARRODS LIMITED
- and -
DOW JONES & COMPANY INC

Claimant

Defendant

Mr James Price Q.C. and Mr William Bennett (instructed by **Kendall Freeman**) for the Claimant
Mr Gavin Millar Q.C. and Mr Anthony Hudson (instructed by **Finers Stephens Innocent**) for the Defendant

Hearing dates : 7 and 8 May 2003

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
Mr Justice Eady

Mr Justice Eady:

1. On 31 March 2002 Harrods Limited issued a press release under the heading “AL FAYED REVEALS PLAN TO ‘FLOAT’ HARRODS”. It stated that an important announcement would be made the next day by the Chairman about his future plans for “the world famous store”, which included what was described as “a first-come-first-served share option offer”. It continued as follows:

“The information may help those journalists who have speculated during the last few months as a future direction of Harrods. The announcement will only be posted on the website until 12 noon on April 1st.

To view the information, log onto alfayed.com and click on the Harrods story on the home page. The re-launched Alfayed.com is Mr Al Fayed’s personal website and gives the visitor the opportunity to learn a little more about Mr Al Fayed, his life, his beliefs and his thoughts”.

Anyone interested was invited to contact “LOOF LIRPA” at Harrods.

2. It will be noted that “Loof Lirpa” is simply “April Fool” backwards. The next day, 1 April, further information was released to the press which was introduced by the words “Hello and welcome to my brand new website. I hope you like it”. Again, it was announced that the Chairman had decided to float Harrods and that those interested in acquiring shares could register on the website. The offer was said to “only be valid until noon today... the 1st April”.
3. As was no doubt intended, these announcements attracted a good deal of media attention. One consequence was that an article appeared in The Wall Street Journal on 5 April in the “Deals & Deal Makers” column. Under the heading “The Enron of Britain?” the following words appeared:

“If Harrods, the British luxury retailer, ever goes public, investors would be wise to question its every disclosure.

Harrods made “news” at the beginning of this week, when the London department store operator announced it was about to sell shares publicly. Some news organisations picked up the news item, including The Wall Street Journal in a news briefs column – but it was all an April Fools’ joke. The gimmick was a promotion for the Web site of Mohamed Al Fayed, the company’s Chairman. Clues that it was a joke included the fact that contact person listed to get more information was Loof Lirpa – April Fool spelled backward.

Not exactly Monty Python-level stuff. But Harrods was pleased with itself, “The reason we played out this April Fools’ joke was to draw people’s attention” to the re-launched and redesigned Web site, says Peter Willasey, corporate communications direct for Harrods. “We have no plans” to issue shares.

Can Harrods get in trouble for messing around with the facts? It is a private limited company. As such its actions aren’t under the aegis of the Financial Services Authority, the U.K.’s securities regulator. A spokesman for Companies House, an agency of the Department of Trade and Industry responsible for regulating corporate governance in the U.K., said the body wasn’t aware of any complaints.

As of yesterday, Harrods hadn’t calculated the number of hits that Mr Al Fayed’s Web site obtained to gauge the success of the bogus release. Mr Willasey says: ‘Mr Al Fayed is delighted it has been picked up all around the world’”.

4. It is to be noted that the above words did not appear in the European edition (i.e. Wall Street Journal Europe). It follows that the number of readers within this jurisdiction would be rather small, since it is to the European edition that most interested readers in England would turn. The evidence is that 10 copies only are sent to subscribers in the United Kingdom from the United States. The words in question were also published in the on-line edition (www.wsj.com.) and in an Interactive Publications Library (www.dinteractive.com). Again, so far, the evidence discloses a very small number of “hits” on the article as published on the web. By contrast, The Wall Street Journal has a national distribution within the United States of approximately 1.8 million copies.
5. A letter of complaint was sent from Harrods by Jeffery Byrne, its director of legal affairs, on 10 April 2002 which was addressed to Mr Peter Kann as publisher, chairman and chief executive, and to Mr Peter Skinner as executive vice-president and general counsel of the Journal. He wrote to complain “in the strongest terms” about the 5 April article and claimed that it had caused serious damage to Harrods’ reputation worldwide and required the publication of an immediate apology. It was said to be “quite scandalous” to have equated Harrods with Enron. It was made clear from the draft apology that Harrods were seeking in addition “a substantial payment of damages” which was to be donated to charity. In due course proceedings were launched in this jurisdiction on 29 May 2002. By this time, the claim was limited to publication in England and Wales. That accords with the principle described by Lord Hope in *Berezovsky v. Michaels* [2000] 1 WLR 1004, 1032: “The rule which applies in these cases is that the plaintiff must limit his claim to the effects of the publication in England...”
6. No proceedings have been launched in respect of circulation within the United States, whether there or elsewhere, and this would hardly be surprising in view of the impact of the First Amendment to the United States Constitution upon the approach taken to libel litigation in the courts of that jurisdiction. It is well known that this also has a significant effect upon the approach of the American courts to the enforcement of judgments arising from English defamation claims.
7. The particulars of claim, which were served on 11 June 2002, attribute to the words complained of the natural and ordinary meaning that every corporate disclosure of Harrods Limited should be distrusted. There is, in the alternative, an innuendo meaning to the effect that “... It is reasonably suspected that if the Claimant were to become a public company it would prove itself to be Britain’s Enron by deceiving and defrauding its investors on a huge scale”. That is based upon the inference that readers would have known of the “scandal” surrounding the collapse of Enron and of the fact that it had “... artificially inflated its profits, employed improper accounting practices and deceived its investors and business counterparts on a huge scale”. If it becomes necessary to do so, the Defendant, Dow Jones & Company Inc., would defend the allegations as not being defamatory and as representing a humorous response to Mr Al Fayed’s April Fool’s Day joke. For the moment, however, there are two applications before the court, on the Defendant’s behalf, which are clearly of potential importance for the future of the litigation. There is, first, a challenge to the validity of the purported service of the proceedings within this jurisdiction and, secondly, an application to stay them on grounds of *forum non conveniens*. There is also, by way of response, a precautionary application on the Claimant’s part for permission to serve the proceedings (should it prove necessary) out of the jurisdiction.
8. Not surprisingly, in the *forum* context, the Defendant places considerable reliance upon the old case of *Kroch v. Rossell* [1937] 1 All E R 725. In particular, I was reminded of the words of Scott L.J. (at 732):

“...it would be ridiculous and fundamentally wrong to have these two cases tried in this country on a very small and technical publication, when the real grievance of the plaintiff is a grievance against the wide-spread publication of the two papers in the respective countries where they are published”.
9. It is submitted on behalf of the Defendant that it would be equally “ridiculous” to have this matter dealt with in England when the “real grievance” of Harrods Limited emerges on the face of the letter before action as having been “... serious damage to Harrods’ reputation worldwide”. Against that background, it is perhaps ironic that the matter has already come before Judge Victor Marrero in the

United States District Court for the Southern District of New York, where Dow Jones sought intervention by that court with a view to avoiding enormous expense and uncertainty as to whether it might continue to publish the offending article. After a detailed consideration of the law, the learned judge found that "... a more appropriate alternative remedy exists for the parties in proceeding with the London Action", and concluded that it was appropriate for the court to refrain from "encroachment upon the British tribunals". He recognised that, if Dow Jones did not prevail in these proceedings, it would not necessarily be left without a remedy in the United States. That was, I believe, a reference to the unwillingness of courts there to enforce judgments based upon "legal principles inimical to prevailing American First Amendment jurisprudence and public policy".

10. I shall have to return to these delicate matters of *forum* in due course, but meanwhile I must address the equally important but more technical question of whether or not service has been effected in this jurisdiction.
11. On 29 May 2002 a copy of the claim form was left with Mr Jan Boucek, company secretary of Dow Jones International Limited ("DJI") at its premises at 10 Fleet Place, London, EC4. DJI is not a party to these proceedings, and Mr Boucek was not authorised to accept service on behalf of Dow Jones & Company Inc. An attempt was made on 12 June 2002 to deliver the particulars of claim to Mr Boucek at the same address, but he declined to accept delivery. The particulars of claim were then faxed to that address later the same day.
12. The matter has to be determined in the light of the provisions of the Companies Act 1985 against an extensive background of judicial authority.
13. Reliance is placed upon the provisions of s.695(2)(a) of the 1985 Act. It is important to note that the context of this statutory regime is the obligation imposed by s.691 of the Act in respect of overseas companies to register documents and returns with the registrar of companies. What s.695 provides is a default mechanism for service; that is to say, where the relevant company has failed to comply with the obligation to register, "a document may be served on the company by leaving it at, or sending it by post to, any place of business established by the company in Great Britain".
14. One of the central questions for me to consider, therefore, was identified as being whether or not Dow Jones & Company Inc. has established a place of business in Great Britain. Attention focused on the only candidate for that description, namely 10 Fleet Place. It is important to note, however, that the concept of establishing a place of business is relevant not only for the purposes of service under the default provisions of s.695, but it is also a fundamental requirement for the obligation to register with the registrar of companies in the first place. In other words, for the service provisions of s.695 to come into play, it is necessary to show that relevant corporation had an obligation to register under s.691. If it did not, that is an end of the matter.
15. The Defendant corporation has not so registered and has always been advised that it has had no obligation to do so – for the very reason that it has not established a place of business in Great Britain. Mr Gavin Millar Q.C., appearing on its behalf, included within his interesting and cogent submissions a "floodgates" argument. His client, like no doubt many other foreign corporations, has set in place a number of arrangements, in accordance with legal advice, to a large extent designed with the specific purpose of keeping outside the scope of the obligation to register created by what is now s.691 of the 1985 Act. He submitted, in effect, that if the English courts were to hold, notwithstanding such arrangements, that the obligation had arisen nevertheless the apple cart would be well and truly overturned. If I were to uphold the Claimant's submission in this case, he argued, it would be tantamount to saying that after all these years the arrangements in place (and, no doubt, the legal advice on which they were based) would have proved to be quite inadequate. That is, of course, an interesting background context, but, in the last analysis, I must come to my own conclusion about the relevant arrangements in this particular case.

16. At the heart of Mr Millar's submissions was the proposition that the court should keep quite separate the concepts of "carrying on business", on the one hand, and "establishing a place of business" in Great Britain on the other. It has never been the law in this country than an obligation to register with the registrar of companies arises from activities and circumstances which can be characterised overall merely as "carrying on business". Nor yet, it follows, would such a state of affairs be sufficient to trigger the default service provisions under s.695.
17. The effect of Mr Millar's submissions, in this regard, is that I should be on my guard against being drawn too readily into looking at the "reality" or "substance" of the matter when addressing the critical question of whether there has been established a place of business. It will not do to adopt too broad a brush. It is necessary to focus on what might appear, in other contexts, to be fairly technical distinctions. That is for the very reason that the English courts have always recognised this boundary between carrying on business and establishing a place of business.
18. That is well illustrated in the Scottish case of *Lord Advocate v. Huron & Erie Loan & Savings Co.* [1911] SC 612, 616. In that case, it would appear that the relevant company had been carrying on business in Scotland in the sense of raising money from investors in the United Kingdom and issuing debentures. That was not good enough, however, since it had not established what the Lord President described as "a local habitation of its own". It seems that the courts within this jurisdiction have continued to focus on that distinction ever since: see e.g. *South India Shipping Corp v. Export-Import Bank of Korea* [1985] 2 All E.R. 219, *Re Oriel Limited* [1986] 1 W.L.R. 180, *Adams v. Cape Industries* [1990] 1 Ch. 433 and *Rakusens Limited v. Baser AS* [2002] 1 BCLC 104.
19. Interestingly, both Mr Millar and Mr James Price Q.C., who was appearing for the Claimant, prayed in aid a number of tests identified by the Court of Appeal in *Adams v. Cape Industries* (at pp.530-531), which were thought to be relevant in determining whether or not, in any given case, a place of business has been established. In applying these criteria to the present case, both counsel claimed to have scored very high marks. The relevant questions identified by the Court of Appeal focussed upon the role of representatives operating within this jurisdiction:
 - a) whether or not the fixed place of business from which the representative operates was originally acquired for the purpose of enabling him to act on behalf of the overseas corporation;
 - b) whether the overseas corporation has directly reimbursed him for the cost of the accommodation, at the fixed place of business, and/or the cost of his staff;
 - c) what contributions, if any, the overseas corporation makes to the financing of the business carried on by the representative;
 - d) whether the representative is remunerated by reference to transactions, e.g. by commission, or by fixed regular payments, or in some other way;
 - e) what degree of control the overseas corporation exercises over the running of the business conducted by the representative;
 - f) whether the representative reserves part of his accommodation, or part of his staff, for conducting business relating to the overseas corporation;

- g) whether the representative displays the overseas corporation's name at his premises or on his stationery and, if so, whether he does it in such a way as to indicate that he is a representative of the overseas corporation;
 - h) what business, if any, the representative transacts as principal exclusively on his own behalf;
 - i) whether the representative makes contracts with customers, or other third parties, in the name of the overseas corporation, or otherwise in such manner as to bind it;
 - j) if so, whether the representative requires specific authority in advance before binding the overseas corporation to contractual obligations.
20. In the present case the principal activities of DJI consist of selling advertising space in the Defendant's publications and to some extent also in publications (e.g. Wall Street Journal Europe) which are published by other companies within the group; financial news gathering, principally for the Dow Jones Newswires business, which is an electronic financial news service for subscribers; and handling and supervising accounts for the Newswires business. This information derives from service agreements and an annual return which were put in evidence by Mr Boucek. It appears from the 2001 annual report that of DJI's turnover £21 million derived from news gathering, £4.2 million from commission on advertising sales and £1.3 million on conference activities.
21. The advertising contracts are arranged on the terms laid down by the Defendant. A question to which some attention was devoted, in the course of the argument, was whether it can truly be said that DJI concludes the contracts directly with the customers in the Defendant's name, without reference back to the Defendant. When the invoice is generated, it is the Defendant's name which appears on the document and no mention is made directly of DJI (although there is in the bottom right hand corner a reference, in general terms, to "your local sales representative", should the customer have any queries). Payment is to be made to the Defendant's US dollar account at the Chase Manhattan Bank in London Wall. On the face of it, therefore, it rather looks as though a contract is generated in the Defendant's name directly between DJI and the relevant customer and that, accordingly, DJI has the necessary authority to contract. The terms of the contract itself, however, make clear that a binding agreement is only concluded when the Defendant chooses, in its editorial discretion, to publish the advertisement in question. Until that point there is only an offer to the Defendant (albeit passed through DJI), which remains open and capable of acceptance until the decision is taken to publish. *That* decision, however, is taken by the Defendant rather than DJI.
22. It was said by the Court of Appeal in *Adams v. Cape Industries* [1990] Ch. 433, 531 that "... the fact that a representative, whether with or without approval, never makes contracts in the name of the overseas corporation or otherwise in such a manner as to bind it must be a powerful factor pointing against the presence of the overseas corporation".
23. There is no sign or notice at the premises at Fleet Place referring to the Defendant, as opposed to DJI. On the other hand, my attention was drawn to the BT Phone Book for London (October 2001), which contains an entry in large type for "DOW JONES & Company Inc - 10 Fleet Pl, EC4 020 7842 9900". There is also an entry for Dow Jones Newswires Departments, giving addresses at 10 Fleet Place, 150 Holborn and 90 Long Acre. Various telephone numbers are given according to the relevant department. There is a separate entry, immediately underneath, for "Dow Jones International Ltd", which again gives various telephone numbers, but the only address given for DJI is 90 Long Acre, whilst the only reference to 10 Fleet Place in the telephone directory is for the "editorial" department of Dow Jones Newswires. By contrast, Dow Jones Inc is not mentioned in the "Business to Business Directory" for London (2001/2002), but DJI has two entries, under 10 Fleet Place and 90 Long Acre, respectively. The same is true of Yellow Pages for London Central (01/02).

24. Mr Millar submitted that it would be wrong to draw an inference of an established place of business merely from a telephone directory entry. Such information would simply provide a potential customer within this jurisdiction, or indeed anyone else, with a route to contact the Defendant without having to go to an international directory. What is more important, for present purposes, is what happens when such contact has been made. If the person wishes, for example, to advertise in the Wall Street Journal, the arrangements will no doubt be made through DJI but, as I have described above, the contract will not be entered into until the editorial decision has been taken, by the Defendant, to insert the relevant advertisement when space has become available.
25. Another matter, which Mr Price has emphasised on behalf of the Claimant, was that there are generally, at any given moment, a number of the Defendant's staff, who are directly paid by the Defendant throughout, operating in London. So far as DJI's own staff are concerned, they are not paid directly but, on the other hand, the Defendant is obliged contractually to reimburse DJI for its staff costs. So too with the premises, it is DJI which contracts in respect of 10 Fleet Place although, once again, the costs so incurred are reimbursed by the Defendant. This may look somewhat artificial, but these arrangements have been in place for some time specifically to ensure that the Defendant does not, so to speak, place a foot within this jurisdiction. The specific "place of business" is in the name of an English company.
26. Although DJI undoubtedly conducts its own business, it is probably fair to say in light of the evidence that most, if not all, of that business is directed towards servicing that of the Defendant. To that extent, its business may be perceived as entirely dependent upon the Defendant (as being in a sense "parasitic"), but that is not necessarily to identify its own business, consisting of the provision of services, as being that of the Defendant. There have from time to time been firms of solicitors with effectively only one client, but that does not mean that the solicitor's practice is that of the client. Naturally, it is right to scrutinise the arrangements with care, but Mr Millar submits that it would not be right to characterise DJI's business as being truly that of the Defendant unless the situation can be characterised as a "sham".
27. As Mr Millar submitted, the burden of proving service rests in this instance upon the Claimant. Accordingly, it must prove all the factual ingredients necessary for that inference. In particular, it must establish all the circumstances upon which it relies as demonstrating that the Defendant has established a place of business within this jurisdiction. It was against this background that I was invited to consider the various factors identified in *Cape* which I have listed above.
28. As to the first criterion, there is no evidence before the court as to whether or not 10 Fleet Place was originally acquired for the purpose of enabling DJI to act on behalf of the Defendant. In the light of the limited nature of DJI's business (I am not, of course, thinking in terms of its scale), I suspect that it probably was. But suspicion is not enough. The fact is that I have no evidence. In any event, it is of greater significance to consider how DJI carries out its responsibilities; in particular, whether it has authority to bind the Defendant to contractual obligations without referring back. For the reasons I have already discussed, I have decided that this is not so in relation to the selling of advertising space. Moreover, it has not been demonstrated with reference to any other sphere of activity.
29. Secondly, the evidence does not establish *direct* reimbursement of DJI, either in respect of accommodation or staffing costs. The chosen contractual method of reimbursement undoubtedly embraces all such costs incurred by DJI and includes a "mark up". Remuneration for its services, however, is not the same as direct reimbursement. The distinctions may seem very technical, but it appears that they are sanctioned by law, and that is why the contractual arrangements take the form they do. There is bound to be a fine drawing of lines if one remembers that a company may be carrying on business here without necessarily having established a place of business.
30. As to what degree of control, if any, the Defendant exercises over the running of DJI's business, Mr Millar submits yet again that there is no evidence. So far as advertising space is concerned, there is no doubt that the terms of business included in the "rate card" are laid down (or, in Mr Price's word,

“dictated”) from the United States. That may well be right, but if it be the case that DJI does not have the power to clinch the sale of advertising space, it is difficult to see how the contents of the rate card could be described as controlling or running DJI’s business.

31. I have come to the conclusion that the Claimant is unable to prove that the Defendant has established a place of business within Great Britain and, it follows, cannot establish that service has taken place effectively by means of sending relevant documents to 10 Fleet Place.
32. An alternative argument was developed by reference to the wording of CPR 6.2 and 6.5. It seems that the point was considered in the course of argument before Gray J in *Lakah Group v. Al Jazeera Satellite Channel*, unreported, 26 March 2003. It is provided in CPR 6.2(2) that a company may be served by any method permitted under Part 6 “as an alternative to the methods of service set out in ... (b) section 695 of [the Companies] Act (service on overseas companies)”. One of the methods so permitted under CPR 6.5 is that a document may be sent or transmitted to, or left at, one of the places shown in the attached table, including a place within the jurisdiction “where the corporation carries on its activities”. There was argument before Gray J as to whether these provisions of the CPR altered the position, by giving greater latitude, for service upon overseas companies. What is significant for present purposes, however, is that the statutory regime under s.695 (for service in default of registration) is predicated upon the proposition that the company to be served is an overseas company within the meaning of s.691 (see paragraph 14 above).
33. The short answer to the alternative argument on service is that the wording of the CPR does not enable one to by-pass the need to demonstrate that a place of business has been established within this jurisdiction. The default provisions of s.695 are predicated upon the assumption that one is dealing with an overseas company falling within the description in s.691.
34. In the light of my conclusion on the Companies Act point, I am invited to give permission to serve out of the jurisdiction. I should make it clear that steps were taken on behalf of the Claimant to extend the validity of the claim form to 31 May 2003. This was a precaution taken against the possibility that the court might find against the Claimant on its primary argument on service. It was achieved by orders of Master Ungley dated 25 October 2002 and Master Leslie dated 24 January 2003.
35. Clearly the issues on the Claimant’s application overlapped considerably with those arising on the Defendant’s application for a stay on the ground of *forum non conveniens*.
36. It is necessary to remember that the court is here concerned with a claim brought by an English company for the purpose of protecting its trading reputation in respect of publications which, according to English law, have taken place within this jurisdiction. That applies both to the small number of copies of *The Wall Street Journal* received by subscribers here and also to the apparently limited number of hits emanating from this jurisdiction on the relevant page of the web site. (See *Godfrey v. Demon Internet* [2001] Q.B. 201; *Loutchansky v. Times Newspapers Ltd* [2002] 2 W.L.R. 640 at [58] and [59]; *Gutnick v. Dow Jones & Co Inc* [2002] HCA 56, High Court of Australia.)
37. There are two important principles of English defamation law which, although they may not commend themselves to parties, courts or commentators in other jurisdictions, are well established. What is more, they have been recognised as of continuing validity in two recent House of Lords decisions, namely *Shevill v. Presse Alliance SA* [1996] AC 959 (where the Brussels Convention was relevant) and *Berezovsky v. Michaels* [2000] 1 W.L.R. 1004 (where it was not). (See also *Schapira v. Ahronson* [1999] E.M.L.R. 735, CA.)
38. The first of these long-standing principles is that English law does not recognise what would now be called a “single publication” doctrine. Even though a newspaper’s primary circulation may be in one or more foreign jurisdictions, English law recognises that there may also be separate publications in

other jurisdictions, each being sufficient to found a separate cause of action. Thus, however limited and technical it may appear, there have been publications within this jurisdiction which are arguably tortious and which give rise to a cause of action here.

39. The other principle of long standing is that damage is presumed. There is no evidence here, so far as I am aware, that the Claimant's reputation suffered any actual damage as a result of the publications sued upon. That is not, however, a stumbling block. It may well be that, even if the Claimant succeeds on liability, the damages recovered would be nominal or very modest. But that is nothing to the point. As Mr Price put it, there is no *de minimis* principle when it comes to establishing publication.
40. It can be argued that the technical nature of these publications ought to weigh heavily with the court when it comes to the exercise of discretion. I have to consider what is the point of allowing such litigation to go ahead, involving no doubt considerable inconvenience and expense to parties outside this jurisdiction, when it appears that the Claimant has so little to gain. Mr Millar argues that it would be disproportionate.
41. There is also the point to which the Judge in New York adverted; namely, that there may be considerable difficulty in enforcing a judgment against the Defendant in the light of public policy in the United States, as applied in the United States courts. Once again, what is the point? I suppose, from the standpoint of an English judge, the point has to be seen in terms of vindication of reputation. That is recognised as perhaps the main public policy consideration underlying the law of defamation generally and, moreover, it is also reflected as a legitimate consideration under Article 10(2) of the European Convention on Human Rights.
42. Mr Price argues that the Defendant does not have to go to any great expense or inconvenience, since "all" it has to do is to acknowledge that it was not intending to draw a genuine analogy with Enron and had no basis for doing so. Unfortunately, I suspect that to American citizens this would present itself as an unacceptable option. In particular, however little interest the 5 April article may have actually generated, as a matter of principle the Defendant would not wish to undertake not to re-publish the original allegations. That would equate to "prior" or "previous" restraint. There is the impasse. The Claimant wishes to pursue the action in order to demonstrate, as an objective matter of truth, and for the record, that the imputations reflected in its pleaded meanings are unjustified. It may be over-sensitive, but I believe as a matter of English law, and for that matter public policy, it is entitled to do so.
43. I also take the view that these English publications relating to an English corporation, however limited and technical, are most conveniently dealt with in an English court. As a matter of fact, that seems to coincide with the view of the learned Judge in the District Court in New York.
44. Reference was made to *Kroch v. Rossell*, as is generally done in such cases. What is important to remember is that Mr Kroch had no real connection with this country, and that factor appears to have been critical so far as the Court of Appeal was concerned in 1937. Here we have an English company which manifestly has a connection with this jurisdiction. This is where it primarily trades and it certainly has a well established reputation here. The case does not, therefore, dissuade me from coming to the decision which, in all other respects, seems to me to be plainly right and in accordance with authority. (See e.g. *The Albaforth* [1984] 2 Lloyd's Rep. 91, 96, *per* Robert Goff L.J. and *Berezovsky*, cited above, at 1014, *per* Lord Steyn.)
45. I will, therefore, refuse the stay on *forum* grounds and grant permission to serve out. I would encourage the parties, however, before further costs are incurred to arrive at a sensible compromise. My words may fall on stony ground, but that is no reason for not making an attempt.