

Cartoons and the law of libel

By Jonathan Barnes

The withdrawal of Scottish libel proceedings by Brian Souter, chairman of Stagecoach, against *Guardian* cartoonist Steve Bell over one of Mr Bell's cartoons prompted a debate as to how unprecedented a claim in libel based on a cartoon really is, and where the cartoonist, caricaturist and satirist stands in relation to English libel law. Are cartoons simply rhetorical exaggerated means of expressing opinions, that in the modern day should not be actionable, or is it still the case that "[a] man may be as grossly libelled, as effectively exposed to hatred, contempt and ridicule, by a caricature as by written language"?

In 1684 Mr Culpepper put Sir John Austin in a pillory, a wooden framework in which offenders of the day were secured for the purposes of public ridicule, insult and molestation. Perhaps fortunately for Sir John his confinement was not actually physical, but portrayed in a picture drawn and circulated by Culpepper. Sir John was however upset enough to sue Culpepper in libel. He duly won. *Gatley On Libel And Slander* records that later, between 1750 to 1830, political caricature in England was generally at a level of ferocity that has not been matched since.

In France, in the 1800s, Honoré Daumier forged a career as a great cartoonist and caricaturist baiting the establishment, and in particular Louis Philippe. He was sued, along with many other satirists. We can only speculate whether it ever occurred to Daumier that had he pursued his profession in England a century or two earlier, in the days of the Star Chamber, he might have ended up with no ears and "SL" (for "Seditious Libeller") branded on his forehead. Lopping and branding were then the penalties for a first, and then second, offence of telling stories (whether untrue or true) that might arouse the people against the great men of the realm.

In 1894 two Tussaud waxwork figures attracted injunctions in libel. The complaint came from Mr Monson, who had recently had a verdict of "not proven" returned by a jury in Scotland at his trial for murder. He objected to his waxwork likeness, holding a gun, being displayed in exhibitions in London and Birmingham in the company of various notorious figures, including a convicted murderer, and on the way to the "Chamber Of Horrors". Two judges of the Queen's Bench Division granted Mr Monson's applications for injunctions in the first instance, but they were later set aside by the Court of Appeal on the basis of new evidence that emerged as to Mr Monson's possible consent to the exhibitions. Nevertheless, the case stands for the proposition that a waxwork figure, appropriately positioned, can found a claim in libel.

In May 1906 Miss Marie Corelli, a well-known authoress, failed to maintain an injunction she had obtained against Mr and Mrs Wall of Stratford-on-Avon to prevent them selling postcards featuring coloured drawings of Miss Corelli in imaginary settings. Miss Corelli first complained that the

drawings did not look like her, but her action evolved into one in libel on the basis the postcards did expose her to ridicule or contempt. The postcards featured Miss Corelli feeding a pair of diminutive ponies, driving the ponies, toying with a pet dog in a "highly floral" scene, in a gondola and presenting a cup to the Stratford-on-Avon boat club. The judge found he could not maintain the injunction because he was not satisfied the cards were libellous. He was also less than enthusiastic about Miss Corelli's argument that as a private person she was legally entitled to prevent the publication of her portrait without consent. Rather, the judge thought common decency would prevail, and most respectable persons, when they learned of the distress the cards caused Miss Corelli, would have nothing to do with them. It is worth noting that the courts are still grappling with the privacy argument almost a century later, now in the context of every individual's right to privacy in their private lives, whether they are famous or not, and Article 8 of the European Convention on Human Rights.

Three years later, in July 1909 Richard Whitehead, the masseur to Yorkshire County Cricket Club, helped a Test match cricketer, Mr G L Jessop, from the field with a back strain. It was later claimed that Whitehead's initial treatment of Mr Jessop had made the injury worse, and a cartoon then appeared in the *Yorkshire Evening News* that questioned Whitehead's conduct as a "rubber down". He sued in libel for £500. A jury awarded him £20.

In 1921 the House of Lords supported an injunction in libel granted by the Irish Courts in favour of Mr John B. Dunlop, the then ageing inventor of the pneumatic tyre, against the company to which he had sold the rights in his invention, the Dunlop Rubber Company Limited. The company had been running adverts for its products featuring a caricature of Mr Dunlop with his portrait bust placed on the body of a very tall man dressed in an exaggeratedly foppish manner, wearing a tall white hat, a white waistcoat, and carrying a cane and eye glass. Mr Dunlop was not, apparently, in the custom of wearing or carrying any of these accessories. He complained that the company's pictures were calculated to expose him to public ridicule by misrepresenting his appearance or costume. The House of Lords agreed that the caricature was at least capable of a defamatory meaning, and declined to interfere with the injunction.

Early in the next decade, in 1933, J.S. Fry, chocolate manufacturers, ran an advertising campaign with what has become perhaps the most famous caricature in English libel law. Their advert contained a caricature of Mr Cyril Tolley, a famous and successful golfer of the day, with an accompanying limerick. Golf was then a strictly amateur sport. The caricature and limerick portrayed Mr Tolley and his caddy, sporting packets of Fry's chocolate, on the golf course. Mr Tolley had just completed a drive, and his caddy was comparing the excellence of the drive with that of Fry's chocolate. Mr Tolley did not complain that his

portrayal as such was defamatory of him. Rather, he complained of the innuendo carried by it that he had prostituted his reputation as an amateur golf player for advertising purposes and was thus guilty of conduct unworthy of his status as an amateur golfer. This innuendo was made good at trial by evidence from golfers that if an amateur lent himself to such a scheme then he might be called on to resign his membership of any reputable club. The House of Lords upheld the jury's finding in favour of Mr Tolley, but ordered a retrial on damages in light of their "excessive" award of £1000.

Twenty years later the Spider's Web restaurant and roadhouse on the Watford by-pass recovered £500 libel damages from a judge. The restaurant complained over a cartoon in *Men Only*, which featured the "Spider's Web" cocktail bar as a room with a red carpet and a man, smoking a very large cigar, introducing a middle-aged male customer to an extravagantly made up woman sitting at the bar. In the judge's view, the latter was indecently attired in an inadequate and suggestive dress. It was accepted that the Spider's Web restaurant in Watford was in fact unknown to the publishers and editor of *Men Only*, but the judge found the "indecent illustration" could nevertheless refer to it and that it therefore contained a possible *double entente* that would sound in damages.

In 1975, in Malaysia, a prominent senator, lawyer and director of the Sabah Foundation obtained injunctions in libel against two daily newspapers. The actions arose from a series of caricatures featuring the senator as a horse being ridden by the chairman of the Foundation with dollar notes jutting from the horse's hip pocket, tossing a small fishbone to a queue of hungry people, entering and leaving "The Magic Door" of financial enrichment and jumping from a money tree. The basic complaint was that the caricatures suggested the senator was a political stooge or errand boy and had unlawfully amassed a private fortune from his public offices. The court agreed, and restrained the newspapers from any similar publications pending a full libel trial.

In 1987 the late Robert Maxwell relied on a cartoon published by *Private Eye* depicting him as Neil Kinnock's, then Leader of the Opposition, "Master's Voice", as aggravating damages in a longstanding libel tussle with the magazine.

That there are relatively few libel cases involving cartoons and drawings must be a reflection of the fact that in many instances the audience will take a cartoon as a piece of satire dramatising or ridiculing a prominent public person for the purpose of making a serious comment. The audience will not take the truth of what appears in the cartoon at "face value", and they will decide for themselves whether or not they agree with the underlying comment. Public persons for their part will recognise that by volunteering themselves into public life they expose themselves to the scrutiny of

comment and the flourish of the cartoonist's pen. But there are clearly limits, and where a piece of written commentary may cross the line and expose the commentator to liability so too a cartoonist will be exposed if the serious point he or she is making is defamatory and cannot be shown to be sufficiently founded in fact. It will not matter to the law of libel if the message a reader takes from the pages of a newspaper is that X is a hypocrite, or a thief, or a racist politician whether that message is communicated in a written news piece, a written opinion piece or a satirical cartoon (perhaps not even containing any words at all).

Nor will there be any automatic protection for the satirist who says he or she was only joking. Smith B, in the Court of Exchequer in Ireland, explained in 1831 that, "[i]f a man in jest conveys a serious imputation, he jests at his peril". In the House of Lords, Lord Blackburn recorded in 1882 that "no one can cast about firebrands and death, and then escape from being responsible by saying he was in sport". Bringing things more up to date, the Court of Appeal in 1996 directed it should be left to a jury to decide whether words to the effect alleging that the actor Steven Berkoff was hideously ugly were defamatory or not. In particular, the jury's task would be to decide whether the words used merely ridiculed Mr Berkoff, or exposed him to ridicule, and in any event whether they defamed him in the eyes of the reasonable reader and so damaged his reputation. The case was prompted by a commentator making an unfavourable comparison between the looks of Mr Berkoff and the monster in a new "Frankenstein" film, describing the monster as "marginally better-looking".

The English law of libel strives to balance the human right of freedom of expression against each individual's right not to have their reputation damaged by things said or written without justification. Recent case law in the area of fair comment shows the English courts taking a robust approach and interpreting that defence to give commentators protection unless they can be shown to have been dishonest, or making their comments on a fundamentally unsound factual basis. This is consistent with Article 10 of the European Convention, concerning freedom of expression, now enacted into English law by the Human Rights Act 1998. It means that all commentators on current and political matters should feel no inhibition in seeking to hold those in public life to account. This includes satirists and it includes cartoonists like Mr Bell.

There is no rich history of cartoon cases in English libel law and Mr Bell's recent negative flirtation, albeit involuntary, with the area is hardly a trend. Perhaps we will continue to have one or two cases a decade. Any more, and satirists might properly begin to question liberty, the constitution, the government and the press as the French caricaturists found themselves doing almost two centuries ago.

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