ROGER C. H. STEELE, Counsellor-At-Law, Steele & Steele Law Firm, Plaintiff/Appellant, v. **THE CHASE MANHATTAN BANK, N. A.**, by and thru its General Manager, Monrovia Branch, Defendant/Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: April 2,3, & 7. Decided: May 30, 1986.

1 A plaintiff who presents a *prima facie case* is entitled to have his cause heard by a jury, especially if he so demands.

2 A litigant in our courts of record, not including tribunal and impeachment proceedings, is entitled to a trial by jury as a constitutional right, unless there is no triable issue for a jury to determine.

The appellant alleged that communication sent to him by the appellee/defendant, Chase Manhattan Bank, was libelous and, consequently, caused him "extreme mental anguish and stigmatized his good reputation in the community." He therefore instituted an action of damages for libel against the appellee/ defendant and requested that the matter be submitted to a jury for determination. The appellee/defendant contended, however, that since the appellant/plaintiff did not show publication of the alleged libelous material, publication being an important element in establishing libel, the case should be dismissed. The lower court judge agreed with the appellee/defendant's position and accordingly dismissed the case. From that dismissal, an appeal was taken to the Supreme Cond.

The Supreme Court observed that while a plaintiff is not entitled to have his case presented to a jury for trial when he has failed to establish a prima facie case against the defendant, there is every reason to believe that the current case presents triable issues of mixed law and facts, and therefore should have been submitted to the jury to determine the rights of the parties. The case was accordingly remanded.

Roger C. H. Steele and *Alfred Flomo* in association with *M Fahnbulleh Jones*appeared for appellant. *H Varney G. Sherman* in association with *S. Raymond Horace, Sr.* and *Joseph P.H. Findley* appeared for appellee.

MR. JUSTICE JANGABA delivered the opinion of the Court.

Appellant, Roger C. H. Steele, filed an action of damages for libel in the Civil Assizes of the Sixth Judicial Circuit, Montserrado County, against the Chase Manhattan Bank, N.A., on March 21, 1985. He alleged that a communication from said defendant to him had brought him extreme mental anguish and stigmatized his good reputation in the community for which he sought damages and any other relief as would behoove the court to award him additionally.

The defendant's counsel made an appearance and at the disposition of law issues, prayed for dismissal of the cause of action for failure of plaintiff to state a case against defendant, especially since the plaintiff had failed to allege publication of the allegedly libelous material, publication being a *sine qua non* to an action of libel.

On June 21, 1985, at the close of the arguments on the law issues, the trial judge ruled in favor of defendant, holding that plaintiff had failed to state *a prima facie* case of libel against the defendant and had conceded same in his pleadings. The judge therefore did not submit the matter to the jury but, instead, dismissed the action against the defendant. Hence, the plaintiff has filed this appeal in which he asserts his legal right to a jury trial. The appellee, however, maintains that the appeal should be dismissed for there is nothing to send to the jury for deliberation since the plaintiff failed to state a prima facie cause of action.

We have found it necessary not to belabor the point in this matter and would rather narrow the issues to one: Whether or not a plaintiff is entitled to have his case presented to the jury for trial even when he has failed to state a *prima facie* case against the defendant? Our answer to this issue is a plain no. A plaintiff who fails to present *a prima facie* case is by no means entitled to have his case presented for jury trial since

indeed there will lie no triable issues for the jury in such a case. Rev. Code .1: 22.1(6).

However, from a close look at the present appeal and the documents presented to this Court, there is every reason to believe that it presents triable issues of mixed law and facts for which the matter should have proceeded to the jury to determine the rights of the parties, especially after it has been demanded by one of the parties. Civil Procedure Law, Rev. Code I: 22.1(2), p.182.

Moreover, we hold that he, like any other litigant in our courts of record outside military and impeachment matters, is entitled to trial by jury as a matter of right under our Constitution. Our Constitution provides that:

"...justice shall be done without sale, or denial or delay; *and in all cases, not arising in courts not of record, under courts martial law, or upon impeachment, the parties shall have the right to trial by jury..."* (Emphasis added) LIB. CONST. (1986) Ch. III, art. 20(a).

The position we have taken is clearly buttressed by the constitutional provision cited *supra.* Accordingly, it is our ardent duty to set the pace in showing respect for those constitutional provisions, and the fundamental rights they seek to protect, by remanding this case for a jury trial since it prespnts mixed questions of law and facts. We therefore hold that the trial judge projected too far into the factual issues by taking the facts away from the jury whose province it is. *Lartey et, al,. v. Corneh,* 18 LLR 177 (1967).

We have therefore considered it prudent to remand this case to the lower court from whence it originated for a jury trial to be held in its June Term, 1986. Hence, the Clerk of this Court is ordered to issue our mandate to the judge of said court to resume jurisdiction and effect same. Costs against the appellee. And it is so ordered.

Judgment reversed and remanded