S. F. ADDO, Appellant, *v.* TEXACO AFRICA, LTD., Appellee.

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

Argued May 17, 1976. Decided June 18, 1976.

1. Cases begun within the jury term but not completed before expiration of forty-two days, may continue until conclusion.
2. Any communication is defamatory if it tends to harm the reputation of another so as to lower him in the estimation of the community, or to deter third persons from dealing with him.
3. A person who procures the publication of slanderous words against or about him cannot recover in an action for damages.

The appellant was discharged by a confidential letter sent him in which the employer recited his loss of confidence in the employee. Subsequently, appellant showed the letter to two business houses, which refused him employment. He thereupon sued for defamation of character. Judgment was rendered against him and he appealed therefrom. In his appeal he also stated the judgment had been rendered out of term time.

The Court held that the judgment was rendered in a case beginning in term time and was, therefore, valid. It also held that while the letter was defamatory, the appellant himself had caused the publication. The judgment was *affirmed.*

Moses K. Yangbe for appellant. *Joseph P. H. Findley* and *R. F. D. Smallwood* for appellee.

MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court.

According to the record received from the trial court in the Sixth Judicial Circuit, the appellant herein was

employed by the appellee company, Texaco Africa Limited, in the capacity of salesman. His employment began on June 6, 1970, and ended with the termination of his services on December 15, 1972. The letter terminating his services is quoted hereunder:

"CONFIDENTIAL

"Mr. S. F. Addo,

Monrovia

"Dear Mr. Addo,

"The Company's loss of confidence in you requires me to dispense with your services effective December 15, 1972.

"You will receive one month's salary in lieu of notice and any leave pay entitlement on a prorated basis.

"Yours very truly,

"Texaco Africa Limited.

"(Sgd.) C. PEAL, *Manager.*"

Upon receipt of this letter, appellant complained to the Ministry of Labor and charged the company with illegal dismissal. He contended that the letter terminating his services had by the use of the words "loss of confidence," implied dishonesty on his part. The complaint was investigated by officials of the Labor Ministry, and the story told during the investigation by a representative of the company is as follows:

"Company's position—Mr. Hamilton on behalf of company.

"The Company has lost $30,000 in coupons due to coupons being used more than once. We cannot identify the coupons that have been re-used. We only know those that have been used more than once. The two persons responsible for the handling of coupons were Mr. Addo and Gli. We have dismissed both of them for loss of confidence and negligence of duty."

Following the termination of appellant's services in December 1972 and before his complaint to the Ministry

of Labor, he had applied to several business places for employment, and had used the letter quoted above terminating his services as reference of his last employment. In one case, F. Ajami Brothers, importers, wholesalers and general merchants, the following answer to this application was made.

"Dear Sir:

"We regret to advise you that we are not able to offer you a job, because of your reference letter dated 15th December, 1972."

His application to another place had also not been favorably considered, and these several failures to secure a job after his dismissal by the appellee had been responsible for his complaint made to the Ministry of Labor.

At the close of the investigation by a committee appointed by the Ministry for that purpose, the following ruling was made:

"1. The company failed to present any concrete evidence to justify its dismissal of Mr. Addo for lack of confidence.

"2. The facts leading to Mr. Addo's dismissal indicate he is not in any way responsible or connected with the re-sale of coupons that had already been used and the company's charge is based on speculation. As was noted during the investigation, Mr. Addo received the coupons from the customer, made credit forms, punched holes in the coupons and then forwarded coupons and forms to the cashier. It's my belief that if any dishonesty was involved, the cashier would have detected such.

"Therefore, in the absence of any substantial evidence implicating Mr. Addo directly or indirectly with the charge, it's my ruling that he either be reinstated or paid off according to law. Furthermore, all indication of dishonesty should be removed from his record."

So far as is contained in the record made during the

investigation, we have not been able to find that any direct charge of dishonesty was made against the appellant. The appellant's own story as he told it at the investigation follows:

"I was employed by Texaco in June (1970) as inspector for the gas stations. I was promoted to the position of dispatch clerk. My responsibility was receiving Texaco coupons. Whenever a customer brought coupons I would check them, make out credit forms and punch three holes in them. The customer then takes the coupons to the cashier. In 1972, while the auditors were visiting us, I was instructed to make the credit forms, send them to the auditors for checking, and they in turn would send them back to me for punching and then to the cashier.

"After the auditors left, one morning the chief accountant told me the manager wanted to see us. When we got to the manager's office, the chief accountant and cashier went in for 30 minutes and the cashier came out. I went in and was told that it had been discovered that the same coupons that came to me were the same ones going out and it appears as if the coupons were being recirculated. In other words, the coupons were not punched and they were finding their way on the market and were being resold.

"I told the manager I did not know anything about such happening; I explained my duties to him. I was told to go outside. The manager and chief accountant remained in the manager's office for about 30 minutes.

"After I went to my office and worked for a while, an agent of the National Bureau of Investigation (NBI), came to my office and asked me my name and about my duties. I explained. He asked me what was the purpose of punching holes in the coupons, I again explained the process to him. He also asked me

if I knew Mr. Fredericks, I said yes, he is my uncle. He then told me he wanted me to identify him because Texaco had reported that he was using gas coupons in some of his gas stations. The NBI agent then told me I was not concerned.

"On December 15, I received a letter from Texaco terminating my services for loss of confidence. Upon receipt of the letter I went to Mr. Hamilton and asked him what I had done. He said he had just returned from Nigeria and he was told about the coupons."

As we have said earlier in this opinion, the first indication that dishonesty could have been the basis for appellant's dismissal appears in the ruling made by the Ministry of Labor at the close of the investigation which that Ministry conducted. The letter which the company wrote dismissing the appellant, and which is the ground of this action, did not mention dishonesty as the basis for loss of confidence in him. Loss of confidence could have resulted from any one of many reasons; for instance, inefficiency, carelessness, or mistake, so there does not seem to be authority for anyone to have concluded that loss of confidence in this case grew out of any dishonest act on the appellant's part.

These were the circumstances when the appellant, plaintiff in the court below, filed this action of damages against the company on June 21, 1973. In his complaint he stated in counts three and four that:

"3. Plaintiff further complains that after his dismissal by the defendant, he made an application to F. Ajami Brothers, a Lebanese firm in the City of Monrovia for employment, but because of the slanderous letter written by defendant addressed to plaintiff of and concerning the good name and reputation of plaintiff, and as will more fully appear from the letters dated March 3, 1973, and July 13, 1973, here-

with made profert as exhibits 'D' and 'E' to form a part of this complaint, plaintiff was not favored and cannot get a job anywhere to earn a living.

"4. Plaintiff is and has always been a law-abiding citizen of the Republic of Liberia, and has never committed any act of dishonesty as charged which could have occasioned loss of confidence; therefore, the allegation made by defendant of and concerning the good name and character of plaintiff are false and untrue, and same were made by the defendant purposely and maliciously to defame the good name and reputation of the plaintiff. Consequently, plaintiff has been damaged."

To this complaint, the defendant company filed an answer in which they denied that "loss of confidence" in their letter of December 1972, which they had written to the plaintiff terminating his services, was not intended to indicate that he was dishonest; they claimed that the company had "discovered certain negligence in plaintiff in the correct and complete performance of his duties which was not satisfactory to defendant and consequently, plaintiff's services had been terminated" for that reason. They claimed that they had complied with the Labor Law with respect to paying one month's salary in lieu of notice, and that they offered the plaintiff the entitlement of any leave pay on a prorata basis.

The answer also stated that having fully complied with the ruling of the Labor Ministry which was rendered against the company and in the plaintiff's favor, no further action accrued to him growing out of the same matter already decided by the Labor Court. In count 10 of the answer, the company stated positively that "there is no act of dishonesty recorded in the records of defendant pertaining to plaintiff's reputation." These are the salient points which we think necessary to pass upon in determining this case.

The case was heard in the March 1974 term of the Civil Law Court, with Judge Alfred Flomo presiding. A jury was selected, sworn, and empanelled, and they returned a verdict in which they denied plaintiff the damages he had sued for, finding that he was not entitled to recover damages from the defendant company. A motion for a new trial was heard and denied, and final judgment was rendered in accordance with the verdict of the jury. The defendant took exception and announced an appeal to the Supreme Court; hence, the case is before us for review.

In the bill of exceptions, appellant has contended that the judgment in this case was rendered out of term time. According to him, the March 1974 Term ended on May 15, but that the judgment was rendered on May 17, two days beyond the expiration of the legal forty-two-day Jury Session. He claims that on this ground the judgment was void.

The record discloses that Mr. Justice Wardsworth, then acting for the Chief Justice, had extended the term for the hearing of certain cases named in the order, so that the judgment was rendered within this extended time, although this case was not one of those for which an extension had been requested.

In keeping with Rule 2 of the Circuit Court Rules, "in cases of special assignments the judge shall remain in the discharge of (these) duties till relieved by orders of the Chief Justice." The duties referred to in this Rule are all of those required to be performed by a Circuit Court judge while in term. So that even though the extension of time was requested to hear certain cases, enlarging the time of the particular term gave the judge full authority to complete any other cases which he might have already commenced.

Counsel for appellant has relied upon two cases which this bench determined: namely, *Morris* v. *Johnson,* 21

LLR 93, 103 (1972), and *Biggers* v. *Wesley,* 24 LLR 92 (1975). In the former case the appellant had filed a motion to dismiss, on the ground that the judge had rendered judgment outside of term time, even though the forty-two days of the Jury Session had not expired; but because the judge had received another assignment to preside over another Circuit, appellant contended that judgment rendered in the Sixth Judicial Circuit was void although the judge had not adjourned sine die. In denying the motion on this ground this Court said:

> "The judge did not disobey the assignment because he continued in term and completed within term time the case he had already begun. . . . It is, therefore, our opinion that the judge did not err in completing the case before adjourning *sine die* on August 5 nor did he in any manner act contrary to proper procedure known in cases where judges who preside in the Sixth Judicial Circuit have been assigned to the next ensuing term of the First Judicial Circuit."

That case is not analagous to this and, therefore, it is irrelevant to the issue appearing here.

In the second case, the judge empanelled a jury to begin a case, after the forty-two days of the Jury Session had expired. In other words, he began a jury hearing beyond the time the statute had allowed for the particular term of court. It is our practice, and this is in conformity with the statute, that cases begun within the jury term but not completed before expiration of the forty-two days, may continue until such cases are finally terminated by judgments. Our Judiciary Law covers the point: "No jury shall be empanelled after the forty-second day of any quarterly trial session, as provided in paragraph 2 of section 3.8, but a jury once empanelled in any case in accordance therewith shall continue until the case is determined." Rev. Code 17:312.

In that case the Court reversed the judgment, because

of the illegality of the trial. That case is not analagous to this in which the jury was empanelled within term time; this case conforms to the statute; therefore, that point in the bill of exceptions is overruled.

Injuries to the reputation include defamation, and it is divided into two general classes: slander which is committed orally, and libel which is by writing. It is with the latter of the offenses that we are concerned in this case. The confidential letter written to the appellant on December 15, 1972, is claimed to contain language which has defamed the appellant, and made it impossible for him to secure other employment. Evidence of this fact has been shown by reference made to this December 15 letter by a business house which refused him employment for this reason.

In deciding whether or not any writing is defamatory, the facts which surround each case govern; and the effect, not the form of the language, is the criterion.

> "In determining whether or not particular language is defamatory, it is impossible to lay down any definite rule which will govern in all cases; but the language used and the particular facts and circumstances of each case must control. Unless there can be no reasonable difference in opinion or understanding that the words are plainly defamatory regardless of the circumstances, the effect and tendency of the language used, not its form, are the criteria by which to determine the actionable quality of the words. It is not necessary, in order to render words defamatory and actionable, that they shall make a defamatory charge in direct terms. It may be made indirectly, as well as by direct assertion in positive terms; and it is not less actionable because made indirectly. It matters not how artful or disguised the modes in which the meaning is concealed if it is in fact defamatory." 53 C.J.S., *Libel and Slander,* § 9 (1948).

So that loss of confidence expressed by the employer as a basis for terminating his services could raise questions as to the employee's moral fitness, ability, or carefulness in the discharge of his duties. And if the circumstances warrant, the words thus attributed to the employer could hurt his chances for future employment. In such a situation the words would be actionable. The appellant is shown by the record to have applied to two business houses, using the letter with the offensive words as reference, and both houses refused him employment; in one case, the letter was referred to as reason for so refusing him. The second place of business did not state why he was refused, but couldn't it be the defamatory words of the letter which were responsible? This might be an assumption, but it is a reasonable assumption. "A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him" 3 A.L.I., *Restatement of Torts,* § 559 (1938). The comments to that section state:

> "d. *Actual harm to reputation not necessary.* To be defamatory, it is not necessary that the communication actually cause harm to another's reputation or deter third persons from associating or dealing with him. Its character depends upon its general tendency to have such an effect. In a particular case it may not do so either because the other's reputation is so hopelessly bad or so unassailable that no words can affect it harmfully, or because of the lack of credibility of the defamer.
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> "e. *Standard by which defamation is determined.* A communication to be defamatory need not tend to prejudice the other in the eyes of everyone in the community or of all of his associates nor even in the eyes of a majority of them. It is enough that the communication tend to prejudice him in the eyes of a substantial and respectable minority of them and that it

be made to them or in a manner which makes it proper to assume that it will reach them."

The following has also been said:

"As a general rule words are actionable if they directly tend to the prejudice or injury of anyone in his profession, trade, or business, whether the words are written or oral. Also, any language imputing want of integrity, a lack of due qualification, or a dereliction of duty to an officer or employee is actionable per se, whether it is spoken or written.

"It is not necessary that the words should contain an imputation on plaintiff as an individual which would be actionable apart from the question of his business or profession, and words injurious in this respect may be actionable, even though they might not be so if said of a person simply in his individual capacity. Words need not hold one up to hatred, ridicule, or contempt, or accuse him of fraud or dishonesty, in order to libel him in his business or calling. The ground of action in such cases is that the party is disgraced or injured in his profession or trade or exposed to the hazard of losing his office, employment, or business in consequence of the defamatory words, and not that his general reputation in the community is affected by them." 53 C.J.S., *Libel and Slander,* § 32 (1948).

"Betrayal of Confidence or Trust. A publication which charges a breach of trust or a betrayal of confidence is generally libelous per se." *Id.,* § 31.

After having said all this, we come now to the next step which must be shown in order to warrant a successful action for libel or any other defamation; to wit, the publishing of the words written or spoken. Damages for defamation, or injury to the reputation, can only be maintained if the offending words written or spoken of and concerning the plaintiff were read by or told to a third party or parties. It must be proved that persons other than the plaintiff himself had been informed of the said

words, and that he had thereby been lowered in the esteem of others. There would be no basis for an action for defamation or right to damages accruing therefrom, if the offensive words spoken or written were known only to the plaintiff himself.

> "'Publication' in the law of defamation, is the communication of defamatory matter to a third person or persons. Since . . . the basis of an action for defamation is damages for the injury to character in the opinion of other men, in order to render defamation of any kind actionable, there must be a publication thereof." *Id.*, § 79.
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> "In order that there be a publication there must be a communication to some person or persons other than plaintiff and defendant. While there is no publication when the words are communicated only to the person defamed, there is a publication as soon as the words are communicated to a person other than the one defamed." *Id.*, § 81.

Thus it has been shown in the record that there were defamatory words used by the appellee in the letter terminating the services of the appellant, and that these words were actionable, and that they were published to persons other than the appellant, who also read the letter. This fact is contained in the appellant's complaint, when he reported that he had used this letter as reference from his last place of employment. It has not been alleged that this letter containing the offensive and defamatory words was seen or read by any persons other than the two business houses to which he sent the document as his reference when he applied for employment. So that as far as is known, publication of the libel in this case was limited to the persons to whom the appellant sent the letter only.

In a similar situation in the case *Cummings* v. *Green*, 3 LLR 11 (1928), this Court said that a person who pro-

cures the publication of slanderous words against himself cannot recover in an action brought for damages. In that case as in this, publication of the offensive words had been made by the plaintiff himself who has alleged the defamatory nature thereof, and has sued for damages.

> "*Extent and Manner of Publication.* By Letter. The mere sending through the mails of a sealed letter containing defamatory matter to the person defamed thereby does not amount to a publication thereof so as to constitute libel, except in criminal cases, unless the sender knows or intends that such defamatory matter will, or may, be seen by or communicated to others. It has been held that the sending of a defamatory writing in an unsealed envelope to the party defamed stands upon the same ground, and is not a publication upon which a civil action can be based, at least in the absence of averment and proof that it was read, or heard read by others. The fact that the letter is sent unsealed by the hands of a third party makes no difference if the third party did not read it. Clearly, one who sends a defamatory letter to another and then orally states to third persons what its contents are has rendered himself liable for either slander or libel, since such conduct constitutes a publication of the letter, and therefore an action of libel may be maintained thereon against the sender." 33 AM. JUR., *Libel and Slander,* § 97 (1941).

In this case, the writer of the letter did not intend that its contents should be seen or read by anyone other than the addressee and, therefore, he marked the letter "confidential." This letter the appellant himself exhibited to two business houses and made profert of it with his complaint. So that, according to his own pleading, he himself published the defamatory words to which he took offense, and upon which he had based his action of damages. In the circumstances, it is our opinion that in