Neutral Citation No. [2011] NIQB 63 | *Ref:* **GIL8231**

Judgment: approved by the Court for handing down | *Delivered:* **30/06/11**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

TERENCE PATRICK EWING

Plaintiff;

-and-

TIMES NEWSPAPERS LIMITED

Defendant.

GILLEN J

Application

[1] This is an application pursuant to Order 18 Rule 19(1)(b) and (d) of the Rules of the Court of Judicature (Northern Ireland) 2009 and the inherent jurisdiction of the court to dismiss the plaintiff's claim on the grounds that the plaintiff's claim is frivolous and/or vexatious or is otherwise an abuse of the process of the court.

[2] The plaintiff's claim in the current proceedings arises out of an article published by the defendant on 11 February 2007 both in the Northern Ireland edition of the Sunday Times Newspapers and on the "Times on-line" website entitled "Heritage Fakers Hold Builders to Ransom". In the course of this article it was alleged, inter alia, that despite claiming to campaign to protect Britain's architectural heritage a non-profit group known as the Euston Trust had accepted a secret payment to drop objections to a development in a seaside town in England. This group was said to be suspected of taking money in similar circumstances from other builders in return for withdrawing objections to proposed developments. The Trust is described in the article as being run by the plaintiff who was said to have studied planning law whilst serving a prison sentence for theft and forgery in the 1980s. The article contained a reference to another individual named Mr Hammerton who had been the secretary of Euston Trust and who had apparently said that he suspected the plaintiff of having received payments from developers "to pull

out of intended judicial review challenges". The article recorded that the plaintiff had emphatically denied ever having been offered and or taking payments from developers.

[3] The article was written by Daniel Foggo and Robert Booth who were journalists with the defendant. The plaintiff also alleges that in the hard copies of the article distributed in Northern Ireland an intrusive small photograph of the plaintiff taken allegedly surreptitiously appeared beside another of Mr Hammerton.

[4] In his amended statement of claim the plaintiff alleges that in their natural and ordinary meanings the words in the article and "The Times On Line" website version meant and were understood to mean that the plaintiff:

- had corruptly been involved with and/or had facilitated and/or condoned the payment of £10,000 or bribe a developer in order to drop objections to the developer's planning application and scheme.

- had corruptly been involved with and/or had fabricated the acceptance of many other bribes from other developers systematically and serially in order to drop objections to other developers' planning applications and schemes and/or judicial review applications in connection with them.

- had corruptly made planning applications for the purpose of extorting demands of the payment of money from developers and/or accepting corrupt payments of money and bribes from them systematically and serially.

- was not genuinely interested or concerned about heritage and planning issues but had been using these issues along with others as a front for corrupt payments from developers in return for dropping planning objections and judicial reviews.

[5] The plaintiff seeks aggravated and/or exemplary damages.

[6] Finally the plaintiff seeks an injunction restraining the defendant from further publishing the said or similar words and ordering the defendant to remove all publications in hard copy within Northern Ireland and from continuing to publish The Times On Line website containing the said words.

Order 18 Rule 19(1) of the Rules of the Court of Judicature (Northern Ireland) 2009("the Rules")

[7] Where relevant these Rules provide as follows:

> "The court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement on any writ in the action or anything in any pleading or in the endorsement, on the ground that –
>
> (a) It discloses no reasonable cause of action or defence as the case may be; or
>
> (b) It is scandalous, frivolous or vexatious; or
>
> (c) It may prejudice, embarrass or delay the fair trial of the action; or
>
> (d) It is otherwise an abuse of the process of the court;
>
> and may order the action to be stayed or dismissed or judgment to be entered accordingly as the case may be."

[8] Mr Ringland QC who appeared on behalf the defendant with Mr McMahon, explained at the outset that the defendant was relying on Order 18 Rule 19(1)(b) and (d). He also indicated that the website in Northern Ireland no longer carries this story.

Background

[9] The background to this case has already been investigated by Coghlin LJ in Ewing v Times Newspapers Limited (unreported COG7603). In that case the defendant Times Newspapers Limited succeeded in an application pursuant to Order 18 Rule 19 of the Rules of the Supreme Court (Northern Ireland) 1980 and the inherent jurisdiction of the court to strike out the statement of claim of the plaintiff. That statement of claim, which arose out of the same article as that under scrutiny in the instant case, made claims for damages for alleged breach of confidence and/or privacy and/or breach of the data protection principles of the Data Protection Act 1998 and/or harassment in relation to the same article.

[10] At paragraph 3 et seq Coghlin LJ set out the background facts which are common to this case and I respectfully borrow his description of those facts.

[11] The plaintiff resides in London and during the course of the current hearing, as in the case of Coghlin LJ, no evidence was produced to indicate that he has or ever has had any connection of any sort with the Northern

Ireland jurisdiction. I pause to observe that in the course of the hearing before me Mr Ewing made a vague reference to some distant family connections in Northern Ireland but no evidence of any kind substantiating this was contained in his affidavit or in evidence before me.

[12] The plaintiff has a long history of involvement in litigation stretching back over many years. In a judgment dated 21 December 1989 he was made the subject of a Civil Proceedings Order, on the application of the Attorney General, and declared a vexatious litigant in accordance with the provisions of section 42 of the Supreme Court Act 1981. In the course of delivering the judgment of the court Rose J referred to a number of quotations from and correspondence written by the plaintiff in relation to the issue of litigation costs. These included:

> "I will not in any event comply with any order for payment or taxation order … I shall knowingly and wilfully be defaulting on all debts owed to your trash wetback clients and the trash Law Society.
>
> I shall of course be deliberately seeking to pursue vexatious objections, simply for the purpose of building up a further legal bill in respect of which you and the Law Society will be billed.
>
> It is my policy on taxation to make the proceedings deliberately as expensive and convoluted for the opposition as I can possibly make them with every conceivable objection and point being taken, no matter how minor … I can also assure you that I intend to make the proceedings in the Westminster County Court as embarrassing as I possibly can for your client and your department."

[13] As a consequence of the order made on 21 December 1989 the plaintiff is prohibited from instituting any civil proceedings in England and Wales without the leave of the High Court.

[14] On 19 June 2008 the plaintiff, as he was required to do, brought an application for leave pursuant to section 42(3) of the Supreme Court Act 1981 to institute civil proceedings against the defendant in England and Wales for libel, breach of confidence and/or breach of privacy and/or breach of the Data Protection Act 1998 in respect of precisely the same article referred to above published in England and Wales on 11 February 2007. The matter came before Coulson J on 19 June 2008 and he gave judgment on 22 July 2008 (see Ewing v News International and others [2008] EWHC 1390 (QB)). In the course of a careful and detailed consideration of all aspects of the plaintiff's

case Coulson J recorded that he found as a fact that the plaintiff was serial litigator who was obsessed with civil litigation and whose stated policy was not to pay the costs of those who successfully defeated his claims. Ultimately, he refused the application on the basis that, in relation to the hard copy articles, those claims were statute barred. Even if such claims were not statute barred Coulson J considered that they had no real prospect of success and/or constituted an abuse of the process of the court. He dismissed the claims in relation to the internet posting for the same reasons together with the additional reason that there was no evidence of publication.

[15] In June 2008 the plaintiff issued further proceedings in Scotland for libel, breach of confidence and/or privacy and/or breach of Section 13 of Data Protection Act 1998 and/or harassment contrary to Section 8(2) and 5(a) of the Protection from Harassment Act 1997 in respect of the same article contained in the Sunday Times Scotland edition on 11 February 2007. The defendant then applied to the Court of Session for a caution (security for costs) in the sum of £50,000 or other such sum as a court might consider appropriate as a condition of the continuation of such proceedings. In the course of giving judgment in this application(see Ewing v Times Newspapers [2008] CSOH 169)("the Scottish case") Lord Brodie referred to the observation of Coulson J that the plaintiff was a serial litigator who did not pay the costs of opponents and noted that such an opinion was consistent with the fact that the plaintiff had failed to pay any part of the sum of £22,500 ordered by Coulson J at the conclusion of his judgment by way of interim payment of costs to the defendant. Lord Brodie took into account the impecuniosity of the plaintiff and his submission that to impose a significant sum in respect of security might very well impair the essence of his right of access to the courts. Nevertheless, having done so Lord Brodie expressed the opinion that the imposition of a reasonable sum by way of security would not contravene the plaintiff's rights under Article 6 of the European Convention of Human Rights ("ECHR") provided that doing so was proportionate and consistent with the legitimate aim of protecting parties against recoverable costs incurred in defending dubious claims and providing the courts with the means of controlling unreasonable conduct. He made the following observations:

> "However, while making an order for caution on a party who is manifestly not in a financial position to provide it may appear to be draconian, justice has to be even-handed and, on the other side of the coin, it would be grossly unfair to oblige the defenders to carry on defending an ….. action without any hope of recovering expenses if successful, particularly against an adversary who has shown that he is prone to table all kinds of procedural motions which have no merit and no justification …"

[16] Lord Brodie then proceeded to review the essential merits of the plaintiff's various claims and having done so considered it to be in the interests of justice to impose security of £15,000. That sum was to be lodged by the plaintiff within four weeks of the order. A further application by the plaintiff to Lord Brodie to reconsider his decision was refused.

[17] The defendant subsequently brought an unsuccessful application for a decree of absolvitor in the Scottish proceedings (an application to strike out the plaintiff's claim) on the basis of the plaintiff's failure to provide the security of £15,000 ordered by Lord Brodie. The plaintiff objected and again sought to argue that ordering security was in breach of his Article 6 ECHR rights and that Lord Brodie had been wrong to hold that his privacy claims were not lawfully actionable. The application came on for hearing before temporary judge Morag Wise QC on 15 January 2009. It is to be noted that during the course of the plaintiff's submissions he told the temporary judge that he could not and would not come up with the of £15,000 ordered by way of security. Finally in Scotland the plaintiff appealed Lord Brodie's judgment- again unsuccessfully –to the Second Division ,Inner House Court of Session (see Ewing v Times Newspapers Limited [2010] CSIH 67.)

[18] Although Mr Ewing could not appeal against the Order of Coulson J made on 22 July 2008 refusing leave under Section 42(3) Supreme Court Act 1981, he was granted permission to appeal in relation to the order for costs. Before me Mr Ewing sought to derive from the judgment of Patten LJ on that appeal an applied criticism of Coulson J on the substantive issue of his refusal to grant Mr Ewing permission to bring the English proceedings. I am satisfied that this suggestion was a gross exaggeration of the purport of the learned judge's remarks. Other than to indicate that applications for leave should not be allowed "to turn into some kind of mini trial of the prospective action" no reference was made to the substance of the refusal hearing . It is clear from the judgment that although Mr Ewing had produced a written skeleton argument challenging the judge's decision to refuse leave, those arguments was not in issue in the appeal which was confined solely to the question of costs.

[19] Before me Mr Ewing introduced the same lengthy written skeleton argument which I assume he presented to the Court of Appeal in England criticising the judgment of Coulson J. He justified the introduction of this further skeleton argument on the basis that Mr Ringland was relying on certain extracts from Coulson J's judgment. I do not consider that it would be a proportionate or justified use of court time to analyse in detail this satellite skeleton argument in the manner that Mr Ewing invited. Suffice to say that I was wholly unconvinced by his submissions and criticisms of Coulson J's reasoning and I am satisfied that those extracts from Coulson J's judgment upon which I intend to rely were entirely justified.

[20] By letter dated 10 February 2009 the plaintiff purported to serve two writs upon the defendant in this jurisdiction arising out of the article in the Northern Ireland edition of the Sunday Times dated 11 February 2007. The first dealt with the libel allegations currently before the court. The second dealt with the allegations which came before Coghlin LJ. An issue arose as to the validity of the first writ which came before Master Bell and subsequently McCloskey J. This issue of the writ is not relevant to the proceedings now before me which is confined solely to the allegations contained in the statement of claim as amended but it serves to highlight the gathering momentum of proceedings which are arising out of this publication in Northern Ireland.

[21] The circumstances in which the plaintiff came upon the article in Northern Ireland were set out by Coghlin LJ at paragraph [36] of his judgment (and indeed are referred to in the decision of the Second division of the Inner House, Court of Session in Scotland in Ewing v Times Newspaper Limited [2010] CSIH 67 at paragraph 6). No dispute was raised by Mr Ewing at this hearing as to the accuracy of Coghlin LJ's description which was as follows:

> "The plaintiff has no connection whatsoever with the Northern Ireland jurisdiction. No evidence has been produced that anyone who knew the plaintiff or was aware of his existence read the article in the Northern Ireland edition of the Sunday Times or drew the same to the attention of the plaintiff at any material time. Indeed, the only reference by the plaintiff to publication to a person other than himself seems to have been the lengths to which he and his friend James Brettle were prepared to go to expose themselves to publication. They travelled to Belfast for the purpose of attending Belfast City Library, accessed an on-line version of the article and downloaded it on to a memory stick for the purpose of obtaining a print out. They also seem to have visited Dublin in order to confirm the circulation of hard copy in this jurisdiction."

Order 1 Rule 1A of the Rules of the Court of Judicature

[22] Before turning to the principles that govern the application of Order 18 Rule 19 of the Rules, it is instructive to consider the overriding objective contained in Order 1 Rule 1A. Where relevant it provides as follows:

"1A-(1) The overriding objective of these Rules is to enable the court to deal with cases justly.

(2) Dealing with a case justly includes, so far as is practicable –

(a) ensuring that the parties are on an equal footing;

(b) saving expense;

(c) dealing with the case in ways which are proportionate to –

(i) the amount of money involved;

(ii) the importance of the case;

(iii) the complexity of the issues; and

(iv) the financial position of each party;

(d) ensuring that it is dealt with expeditiously and fairly; and

(e) allotting to it an appropriate share of the Court's resources, by taking into account the need to allot resources to other cases.

(3) The court must seek to give effect to the overriding objective when it –

(a) exercises any power given to it by the Rules; or

(b) interprets any rule."

[23] Whilst therefore the Civil Procedure Rules ("CPR") which operate in England and Wales do not apply in Northern Ireland, nonetheless I believe that much of the spirit of the CPR is embraced in Order 1 Rule 1A of the Rules of Court of Judicature in Northern Ireland. That cases should be dealt with justly is not a freestanding principle of law but the rule does create the framework against which all the rules have to be construed. These are prophylactic rules introduced to ensure a more businesslike approach to case management. Libel cases have historically been notoriously drawn out and expensive and are particularly amenable to the culture of the new procedural code. Whilst the overall principle is to ensure that justice is done, at least one

element of the purpose is to avoid unnecessary use of court time and resources on unjustified litigation and to protect prospective defendants from unmeritorious expense.

[24] The notion that certain proceedings are simply not worth the court time and costs which they entail is very much a product of the new climate in. If early authoritative support is sought for the this new approach it is found Schellenberg v BBC [2000] EMLR 296. In that case Eady J struck out a libel action against the BBC after the claimant's actions against the Guardian and Sunday Times had settled on disadvantages terms some five weeks into the hearing of the Guardian action. Applying the overriding principles of the CPR and making robust use of case management principles, the court held that the pursuit of the action in the hope of salvaging something from the disastrous outcome of the previous action could only be characterised as a desperate exercise in damage limitation. The court could not accept that there was "any realistic prospect of the trial yielding any tangible or legitimate advantage such as to outweigh the disadvantages for the parties in terms of expense and the wider public in terms of court resources." See also Gatley on Libel and Slander 11th Edition at paragraph 32.44.

[25] At page 15 of the judgment in Schellenberg's case, the learned judge said:

> "Even in a jury action it is regarded under the C.P.R. as a judge's duty to take a realistic and practical attitude. He or she is expected to be more proactive even in areas where angels have traditionally feared to tread. I have seen nothing to suggest that the C.P.R. are to be applied any less rigorously, or the judge's are to be less interventionists, in litigation of the kind where there is a right to trial by jury. That important right is sometimes described as 'constitutional right', although the meaning of that emotive phrase is a little hazy. Nevertheless I see no reason why such cases require to be subjected to a different pre-trial regime. It is necessary to apply the overriding objective even in those categories of litigation and in particular to have regard to proportionality. Here there are tens of thousands of pounds of costs at stake and several weeks of court time. I must therefore have regard to the possible benefits that might accrue to the claimant as rendering such a significant expenditure potentially worthwhile."

[26] That approach of Eady J has found favour in subsequent cases in the Court of Appeal namely Wallis v Valentine [2003] EMLR 8 at paragraph 33 and Jameel (Yousef) v Dow Jones[2005] QB 946.

[27] I find Jameel's case particularly instructive in this regard. In that case a libel had been published to a minimal extent in England and Wales by a foreign publisher and no substantial tort had been committed within the jurisdiction.

[28] Allowing the publisher's appeal against a refusal for summary dismissal of the claim, Lord Phillips said at paragraph 55:

> "There have been two recent developments which have rendered the court more ready to entertain a submission that pursuit of a libel action is an abuse of process. The first is the introduction of the new Civil Procedure Rules. Pursuit of the overriding objective requires an approach by the court to litigation that is both more flexible and more proactive. The second is the coming into effect of the Human Rights Act 1998. Section 6 requires the court, as a public authority, to administer the law in a manner which is compatible with Convention rights, insofar as it is possible to do so. Keeping a proper balance between the Article 10 right of freedom of expression and the protection of individual reputation must, so it seems to us, require the court to bring to a stop as an abuse of process defamation proceedings that are not serving the legitimate purpose of protecting the claimant's reputation, which includes compensating the claimant only if that reputation has been unlawfully damaged."

[29] The court went on to mention with approval the judgment of Sir Murray Stuart-Smith in Wallis v Valentine [2003] EMLR 175 where the court had found that even if the claimant in a libel action succeeded his damages would be very modest, perhaps nominal, and not such as to justify the costs of an action which was estimated to last fourteen days in circumstances where the claimant had no assets. Furthermore the claimant was not motivated by a desire for vindication but was pursuing a vendetta.

Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms ("the Convention ")

[30] Article 6(1) of the Convention secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or

tribunal and accordingly embodies the "right to a court" of which the right of access, that is the right to institute proceedings before a court in civil matters, constitutes one aspect.

[31] However the right to a court is not absolute. Limitations, including financial ones, may be placed on party's access to a court or tribunal as long as the limitations pursue a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the legitimate aim sought to be achieved. (See Teltronic-CATV v Poland, app no 48140/99 European Court of Human Rights, 10 January 2006). That right is therefore subject to the rights of the other party to be protected against being put to irrecoverable expense by an impecunious and irresponsible litigant. (See Ewing v Times Newspapers Limited [2010] CSIH 67 at paragraph 10). Art 6 of the Convention does not confer upon a litigant an unfettered choice of forum in which to pursue or defend his civil rights.

Principles governing the application of Order 18 Rule 19(1)(b) and (d)

[32] For the purposes of this application, all the averments in the statement of claim must be assumed to be true. (O'Dwyer v Chief Constable of the RUC (1997) NI 403 at p. 406C).

[33] O'Dwyer's case is authority also for the proposition that it is a well settled principle that the summary procedure for striking out pleadings is to be used only in plain and obvious cases.

[34] In approaching such applications, the courts should be appropriately cautious in any developing field of law particularly where the court is being asked to determine such points on assumed or scanty facts pleaded in the statement of claim (see Lonrho plc v Tebbit [1991] 4 All ER 973 at 979H).

[35] Evidence by affidavit is admissible so that the courts can explore the facts under Order 18 r. 19(1)(b)-(d). Thus I am entitled to rely on the affidavits before me of Ms Mathews on behalf of the defendant and Mr Ewing on behalf of the plaintiff. However a court at this stage must be careful not to engage in a minute and protracted examination of the documents or the facts of the case. I draw attention to the comments of Danckwerts LJ in Wenlock v Moloney (1965) 2 All ER 871 at 874G where he said of the comparable English rule as it then was:

> "There is no doubt that the inherent power of the court remains; but this summary jurisdiction of the court was never intended to be exercised by a minute and protracted examination of the documents and the facts of the case in order to see whether the plaintiff really has a cause of action. To do that, is to usurp the

> position of the trial judge and to produce a trial of the case in chambers on affidavits only without discovery and without oral evidence tested by cross-examination in the ordinary way. This seems to me to be an abuse of the inherent power of the court and not a proper exercise of that power."

[36] In the context of the inherent power of the court to prevent misuse of its procedure, I am also conscious of the terms in which Lord Diplock described this in Hunter v Chief Constable of the West Midlands Police [1982] AC 529 at 536:

> "Inherent power [is that] which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right thinking people. The circumstances in which abuse of process can arise are very varied; those which give rise to the instant appeal must surely be unique. It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power."

[37] As I have already indicated in dealing with Jameel's case et seq, categories where abuse have been established include those where there is an impermissible collateral objective and where the proceedings are simply not worth the court time and costs which they entail.

The applicant's case

[38] In the course of a seven page skeleton argument, augmented by oral submissions before me, Mr Ringland advanced the following points.

- Historically the plaintiff is a serial litigator who has taken up an inordinate amount of court time and the time of his opponents over a period of years.

- The plaintiff has a history of bring proceedings for the avowed purpose of racking up costs and putting his opponents to the

maximum expense and inconvenience and refusing to pay those costs if awarded against him.

- The plaintiff has no connection with this jurisdiction and has not brought proceedings to vindicate his reputation. He is motivated by a vendetta. No real or substantial tort has occurred in this jurisdiction. The proceedings thus are "not worth the candle".

- The comments of Lord Phillips in Jameel's case indicate that the courts are now more readily prepared to entertain an application to dismiss a libel action as an abuse of process. Order 1 Rule 1(A) requires the court in this jurisdiction to take the same approach.

- A jury properly directed in this case could not award more than nominal damages given the history of this plaintiff's criminal record, his history as a vexatious litigator and his lack of connection or reputation in Northern Ireland.

- The defendant enjoys viable defences based on justification and/or qualified privilege.

- The pleading of injunctive relief was defective.

The defendant's case

[39] In the course of a 31 page skeleton argument with 50 separate citations (later supplemented by a further 21 citations delivered shortly before I was to hand down judgment) and in oral arguments, Mr Ewing, who was a personal litigant, asserted the following:

- There is an irrebutable presumption in English defamation law that publication of a defamatory article damages the person defamed by it without proof of special damage.

- A claimant may bring an action for defamation before the courts of each state where the publication has been distributed.

- Compensation includes natural injury to feelings ie. the natural grief and distress which he may have felt at having been spoken of in defamatory terms. Damages thus include compensation for actual injury to reputation, distress and hurt feelings and as an outward and visible sign of vindication. Solatium for injury to feelings and reputation thus provide a basis for an award.

- This article and the website had a wide circulation in Northern Ireland.

- The affidavit of Cathy Mathews was inadequate for a strike out application especially in the absence of evidence or statements from the two journalists who had written the article.

- He had a right under Article 6 of the Convention to enjoy a good reputation as a civil right. Article 8 of the Convention affords a person a right to reputation.

- There is jurisdiction to grant an injunction to restrain further publications of a libel and it is often appropriate to include such a claim.

- The defences of justification and qualified privilege had not been made out.

- The principles governing the application of Order 18 Rule 19 militated against a strike out in this instance.

Conclusion

[40] I have come to the conclusion that it would be an abuse of the process of this court to allow this case to continue both under the inherent jurisdiction of this court and under Order 18 rule 19 (1)(d). I also consider it is vexatious litigation under Order 18 r.19 (1)(b). In so determining, I have given careful consideration to all the likely issues as well as the issue of proportionality and the overriding objectives contained in Order 1 Rule 1A. I have taken into account not simply the interests of the parties before the court but also the interests of other litigants and the overall administration of justice including the potential for costs, expense and time which in my view is liable to escalate out of all proportion to the nature of this case. I consider that such an approach is consistent with proportionality observations on the rights of individuals under Article 6 of the European Convention.

[41] I consider that I must exercise my inherent power to prevent misuse of procedure in this instance. In my view it would be manifestly unfair to the defendant and an unedifying spectacle which would bring the administration of justice into disrepute amongst right thinking people to allow the plaintiff to continue to bring these proceedings in Northern Ireland. I have come to these conclusions for the following reasons.

[42] First, I am satisfied that this plaintiff has no connection with or reputation of any moment requiring protection in Northern Ireland arising out of this article. He is from England, is a convicted fraudster and vexatious litigator who cares little for the expense or trouble he incurs his opponents in that jurisdiction. The Euston Trust confines its activities to London. He has no meaningful connection with Northern Ireland. For the first time during

the hearing he made a vague reference to "distant relatives" in Ireland but no details were forthcoming from him about this. No evidence has been given of anyone he knew in Northern Ireland reading the article. The circumstances outlined by me in paragraph [21] of this judgment depicting the manner in which he came into possession of the article in Northern Ireland are illustrative of the lengths to which he has gone in order to discover a basis for a claim.

[43] I am satisfied therefore that there is substance in the claim by Mr Ringland that there would be a gross distortion between the minimum vindication which could conceivably be achieved by the plaintiff in this action and the huge cost which would be entailed in terms of courts resources, time and expense to the other party. This plaintiff has shown a predilection for serial interlocutory and substantive litigation in other jurisdictions at all tiers and I have no reason to doubt history would be repeated in this jurisdiction. I find support for this concern in the sentiments of Lord Brodie in the Scottish case at paragraph 29 of his judgment where he said:

> "What emerges from that history is a picture of a determined recreational litigant with little regard for the constraints that the courts have attempted to impose, no appreciation of the proportionality of his actions and no concern for the financial interests of others. He was made the subject of a civil proceedings order as defined in Section 42(1) of the Supreme Court Act 1981 as long ago as 1990 by reason of his having made at least 25 vexatious claims. That order has not diminished the pursuer's appetite for serial litigation. None of that bodes well for the manner in which he is likely to conduct his action in a jurisdiction with which he has no previous experience."

[44] Lord Brodie's comments find a resonance in the judgment of Coghlin LJ at paragraph [41] where he states:

> "It is clear that the plaintiff has only issued these proceedings in Northern Ireland and, indeed, in Scotland, as a 'fall back' in the event of his being unable to pursue his action in England and Wales. To some extent the lack of relevance of this jurisdiction may be measured by the trouble to which the plaintiff and Mr Brettle had to go achieve publication of the offending article to themselves in Northern Ireland. Accordingly there is likely to be some substance in the defendant's submission that the plaintiff would be

> likely to encounter significant difficulty in establishing that he has suffered injury to his feelings, embarrassment or distress as a consequence of the publication of the article in Northern Ireland."

[45] In making these points I am acutely aware of the clear authority that it is an irrebuttable presumption in English defamation law that the publication of a defamatory article damages the person defamed by it. (See Jameel's case). Mr Ewing produced a myriad of cases which do no more than underline this simple point. I also recognise that the words in the impugned article are capable of bearing the meanings alleged by the plaintiff in the statement of claim. That said however, the matter has to be balanced in light of the recent developments adverted to by Lord Phillips in Jameel's case (paragraph 55) which have rendered the court more ready to entertain a submission that pursuit of a libel action can be an abuse of process. I believe the instant case to be a classic example of where the court must keep a proper balance between the Article 10 right under the Convention invoking the right to freedom of expression and the protection of individual reputation which in this instance requires the court to bring a stop as an abuse of process to proceedings such as this which are not serving the legitimate purpose of protecting the plaintiff's reputation.

[46] This is not to say that it is an abuse of process for an impecunious plaintiff to bring proceedings for a proper purpose and in good faith whilst being unable to pay the defendant's costs if the proceedings fail. I am satisfied that that is not the case in this instance. This is a case which is "not worth the candle". The fact of the matter is that even if this plaintiff was to succeed, the damages would be extremely modest, perhaps nominal given his reputation as a fraudster, his wearily familiar history of serial litigation and the paucity of his connections with Northern Ireland. In short I do not believe that any damages he would receive could justify the costs of an action which inevitably will last many days and in circumstances where he has shown an unbending disinclination to pay any costs to those who succeed against him. No substantial tort has been committed in this jurisdiction in these circumstances and I do not conceive of any jury concluding that it has done significant damage to his reputation. In such circumstances I consider this is a plain and obvious case where to pursue this action is disproportionate and an abuse of process.

[47] Mr Ewing relied upon the claim of hurt feelings by way of compensation. However he has no connection with Northern Ireland and no apparent reputation here to defend. If he should have suffered hurt feelings when he read the article here, his hurt was self-inflicted brought about by his own efforts to unearth the article a substantial time after its publication. He deliberately sought the article out. He is manifestly only pursuing his case in Northern Ireland because his litigation on the same article has failed in

England and Scotland. Even if there were to be a vestige of merit in this claim for hurt feelings the action would be disproportionate to its value. As Lord Brodie recorded at paragraph 27 of his judgment in the Scottish case, the plaintiff has gone to some trouble to expose himself to publication of the Northern Ireland edition and the court will have regard to that in relation to hurt feelings. He has deliberately contrived that any feelings are hurt by ensuring publication to himself.

[48] In this context I see no reason to differ from the conclusion of Coulson J that this plaintiff has a collateral purpose in initiating litigation. Why else would he litigate in Northern Ireland where he has no connection whatsoever having waited almost one year before travelling to Northern Ireland to search out the article. He has already misused the court's process in England and Wales in an attempt to achieve something not properly available in the course of properly conducted proceedings. There is a history of him conducting proceedings in a manner designed to cause the defendant problems of expense, harassment or the like beyond those ordinarily encountered in the course of properly conducted litigation. Mr Ringland was correct to draw to my attention the plaintiff's delay in this matter. His complaint to the Press Complaints Commission was dismissed on 31 May 2007 and on 8 August 2007 the Office of Chartered Commissioner rejected the plaintiff's further complaint about the handling of his complaint by the Press Complaints Commission. Thereafter he did nothing to progress his complaint until he sent a letter to the defendant on 13 January 2008 intimating legal proceedings. The writ of summons was issued against the defendant on 11 February 2008, the last day before expiry of the limitation period. I consider this inconsistent with the motivation of a person with a genuine grievance who seeks to vindicate his reputation or has suffered hurt feelings in Northern Ireland. There is merit in the comment of Coulson J that the plaintiff is obsessed with civil litigation and will seek to commence proceedings about anything at all whether he has a personal interest in the subject matter of the proceedings or not

[49] I observe in passing that in coming to my conclusion that this action must be dismissed, I have not taken into account two matters. First I do not consider it to be permissible to anticipate the defences which the defendant may raise in this case – even though there is a possibility that the defences of justification and qualified privilege may be strong – in the absence of the matters being pleaded. (See Nagle v Fielden (1966) 2 QB 633). Secondly I was not persuaded by the defendant's argument that the plaintiff has fatally failed to plead the fact that the defendant "threatens and intends" to continue to publish the words complained of in seeking injunctive relief. Even if this was a sustainable pleading point, I have no doubt that a court would permit appropriate amendment if necessary.

[50] In conclusion therefore I am satisfied that these proceedings constitute a paradigm of an abuse of process under Order 18 Rule 19(1)(d), that they are vexatious proceedings under Order 18 Rule 19(1)(b) and that in any event it would be appropriate under my inherent jurisdiction to dismiss that action as an abuse of the procedure of the court .

[51] I shall hear the parties on the question of costs.