[fol. 2165]

IN THE SUPREME COURT OF ALABAMA

No. .....

THIRD DIVISION

THE NEW YORK TIMES COMPANY, A Corporation, RALPH D. ABERNATHY, FRED L. SHUTTLESWORTH, S. S. SEAY, SR., AND J. E. LOWERY, Appellants,

VS.

L. B. SULLIVAN, Appellee.

ASSIGNMENTS OF ERROR OF RALPH D. ABERNATHY, ET AL.

Come the Appellants, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery in this cause and say there is manifest error in the trial of this cause and manifest error in the record of the trial of this cause and as grounds for such error set down and assign the following, separately and severally:

1. For that the trial court erred in overruling these defendants' demurrers and amended demurrers to plaintiff's Complaint. (Tr. 86)

2. For that the trial court erred in its ruling refusing to allow these defendants to propound the following question to the jury venire on voir dire:

> "1. I will ask you, gentlemen, even though at the close of this case that you may find a certain statement contained in the advertisement made the basis of the plaintiff's complaint in this case in their cause of action are not accurate or correct but the evidence discloses that the advertisement did not refer to the plaintiffs, do you entertain any conviction, opinion, or predisposition of mind which would compel you to return a verdict in favor of the plaintiffs, or would prevent your returning a verdict in favor of the defendant, the New York Times Company, a corporation?"

to which ruling these defendants duly and legally excepted. (Tr. 1694-95)

3. For that the trial court erred in its ruling refusing to allow these defendants to propound the following question to the jury venire on voir dire:

> "2. Have any of you gentlemen ever been a plaintiff in a lawsuit in this Court any number of times, that is to say, have you filed a suit seeking recovery of money from another person, firm, or corporation?"

to which ruling these defendants duly and legally excepted. (Tr. 1695)

4. For that the trial court erred in its ruling refusing to allow these defendants to propound the following question to the jury venire on voir dire:

> [fol. 2166] "3. I will ask you, gentlemen, if at the close of the evidence in this case and the evidence shows that The New York Times Company was not actuated by malice in publishing this paid advertisement, would you refuse to award damages to punish the New York Times, that is to say, would you refuse to award punitive damages?"

to which ruling these defendants duly and legally excepted. (Tr. 1695)

5. For that the trial court erred in its ruling refusing to allow these defendants to propound the following question to the jury venire on voir dire:

> "4. Is there any reason, without disclosing that reason to me, that would tend to embarrass you, or embarrass you in any way, or cause you to hesitate to return a verdict in favor of the New York Times Company, a corporation, in this case?"

to which ruling these defendants duly and legally excepted. (Tr. 1695)

6. For that the trial court erred in refusing to sustain these defendants' objection to the way that the word

N-E-G-R-O was being pronounced which sounded like N-I-G-R-A or Nigger. (Tr. 1695-98)

7. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Grover C. Hall, Jr.:

> "Q. I will ask you, Mr. Hall, whether you associate the statements contained in that paragraph with any person or persons?"

to which ruling these defendants duly and legally excepted. (Tr. 1723)

8. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Grover C. Hall, Jr.:

> "Q. Referring to the statements contained in the paragraph of the ad to which I referred you, do you associate those statements with any person or persons?"

to which ruling these defendants duly and legally excepted. (Tr. 1724)

9. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Arnold D. Blackwell:

> "Q. Do the statements contained in that paragraph associate themselves in your mind with any person or group of persons?"

to which ruling these defendants duly and legally excepted. (Tr. 1734-35)

10. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Arnold D. Blackwell:

> [fol. 2167] "Q. Now, if you believed the statements in that paragraph to be correct, Mr. Blackwell, and true, would they affect your opinion of the Police Commissioner in any way?"

to which ruling these defendants duly and legally excepted. (Tr. 1736)

11. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Arnold D. Blackwell:

> "Q. . . . I ask you there whether those statements associate themselves in your mind with any person or persons?"

to which ruling these defendants duly and legally excepted. (Tr. 1737)

12. For that the trial court erred in overruling these defendants' objection to the witness, William H. McDonald:

> "Q. Now, going back to March 6th of this year, 1960, Mr. MacDonald, did you have occasion to observe a demonstration or a near riot that took place on Dexter Avenue on Sunday, March 6th?"

to which ruling these defendants duly and legally excepted. (Tr. 1748-49)

13. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Harry W. Kaminsky:

> "Q. Now, Mr. Kaminsky, do you associate the statements and material contained in that paragraph that I have just showed you with any person or persons?"

to which ruling these defendants duly and legally excepted. (Tr. 1755)

14. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Harry W. Kaminsky:

> "Q. If you believed the statements contained in that paragraph to be correct, Mr. Kaminsky, would that affect in any way your opinion of the Police Commissioner?"

to which ruling these defendants duly and legally excepted. (Tr. 1755)

15. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, H. M. Price, Sr.:

"Q. Mr. Price, did it—when you read the statements contained in those two paragraphs, do they associate themselves in your mind with any person? Those statements of events?"

to which ruling these defendants duly and legally excepted. (Tr. 1765-66)

[fol. 2168] 16. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, H. M. Price:

"Q. Mr. Price, if you believed the statements contained in those two paragraphs to be true, regardless of whether you think them to be true, if you believed them to be true, would that affect your opinion of Mr. Sullivan—?"

to which ruling these defendants duly and legally excepted. (Tr. 1766)

17. For that the trial court erred in overruling these defendants' motion to strike the following answer of plaintiff's witness, H. M. Price, Sr.:

"A. I don't think there is any question about what I would decide. I think I would decide that we probably had a young Gestapo in Montgomery."

to which ruling these defendants duly and legally excepted. (Tr. 1766)

18. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, William M. Parker, Jr.:

"Q. Mr. Parker do you associate those statements contained in those paragraphs with any person or persons that you know or are acquainted with?"

to which ruling these defendants duly and legally excepted. (Tr. 1770-71)

19. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, William M. Parker, Jr.:

"Q. Mr. Parker, on the assumption that you believed those to be true, whether you do or not, but if you did believe them to be true, the statements I have read, would that affect your opinion of Mr. Sullivan, and if so, state how."

to which ruling these defendants duly and legally excepted. (Tr. 1771)

20. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Horace W. White:

"Q. Did it mean any particular person or persons to you?"

to which ruling these defendants duly and legally excepted. (Tr. 1785)

21. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Horace W. White:

"Q. I will ask you this, if you believe—not saying that you believe or do not believe—but if you believed the material in those paragraphs in this ad, would that affect your opinion of Mr. L. B. Sullivan?"

to which ruling these defendants duly and legally excepted. (Tr. 1785)

[fol. 2169] 22. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Horace W. White:

"Q. In what manner would it affect your opinion?"

to which ruling these defendants duly and legally excepted. (Tr. 1786)

23. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, John R. Matthews:

"Q. Now, where is the first entry in your books which indicated a charge in connection with the incident on March 8th?"

to which ruling these defendants duly and legally excepted. (Tr. 1797-98)

24. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, E. Y. Lacy:

> "Q. In the course of your duties, Lt. Lacy, did you have occasion to investigate a bombing which took place in the home of Martin Luther King, Jr., in Montgomery, Alabama?"

to which ruling these defendants duly and legally excepted. (Tr. 1807)

25. For that the trial court erred in its ruling refusing to allow these defendants to propound the following question on cross-examination to the witness, E. Y. Lacy:

> "Q. Then, obviously, this article or the matter that you talked about didn't apply to him, did it?"

26. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, O. M. Strickland:

> "Q. As connected with the arrest of Martin Luther King, Jr., and state what the circumstances were and what happened on that occasion in your own words."

to which ruling these defendants duly and legally excepted. (Tr. 1814-15)

27. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Frank R. Steward:

> "Q. Would you state the circumstances of the expulsion of nine students from Alabama State College by the State Board of Education?"

to which ruling these defendants duly and legally excepted. (Tr. 1819)

[fol. 2170] 28. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Frank R. Steward:

"Q. Now, Doctor, I want to read one sentence to you and ask you whether it is true. 'In Montgomery, Alabama, after students sang "My Country 'Tis of Thee" on the State Capitol steps their leaders were expelled from school.' "

29. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness L. B. Sullivan:

"Q. I call your attention, Mr. Sullivan, to the third paragraph in the left hand column of this ad which reads as follows: 'In Montgomery, Alabama, after students sang "My Country 'Tis of Thee," on the State Capitol steps, their leaders were expelled from school and truckloads of police, armed with shotguns and tear gas, ringed the Alabama State College campus.' I ask you if that statement is true or false?"

to which ruling these defendants duly and legally excepted. (Tr. 1829)

30. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

"Q. Now Mr. Sullivan, I call your attention to the next sentence in that same paragraph which reads as follows: 'When the entire student body protested to State authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission.' Is that statement true or false?"

to which ruling these defendants duly and legally excepted. (Tr. 1830)

31. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

"Q. Now, I ask you, Mr. Sullivan, whether, to your knowledge, it is accurate that they have arrested him seven times—for speeding, loitering and similar offenses?"

to which ruling these defendants duly and legally excepted. (Tr. 1832)

32. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

> "Q. Mr. Sullivan, did you have anything at all to do with procuring the indictment of Martin Luther King on a charge of violating income tax laws of the State of Alabama?"

to which ruling these defendants duly and legally excepted. (Tr. 1833)

[fol. 2171] 33. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

> "Q. Did you testify in that case either before the Grand Jury which indicted him, or before the petit jury which tried him?"

to which ruling these defendants duly and legally excepted. (Tr. 1833)

34. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

> "Q. Did you testify with regard to the guilt or innocence of the defendant?"

to which ruling these defendants duly and legally excepted. (Tr. 1834)

35. For that the trial court erred in overruling these defendants' motions to exclude plaintiff's evidence, to which ruling these defendants duly and legally excepted. (Tr. 1853)

36. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, John Murray:

> "Q. Now, did you satisfy yourself that the facts that you were going to put into this ad were correct or that the

purported facts which were going into the ad were correct?"

to which these defendants duly and legally excepted. (Tr. 1941)

37. For that the trial court erred in denying these defendants' motion to exclude plaintiff's evidence as refiled, and to which ruling these defendants duly and legally excepted. (Tr. 1944)

38. For that the trial court erred in its oral charge to the jury wherein the Court instructed the jury as follows:

"Now the Court is of the opinion and so charges you, gentlemen of the jury, that the matter complained of in plaintiff's Exhibit No. 347, that's the controversial ad which you will have before you, and parts of which are set out in the Counts here in the Complaint, belongs to that class of defamation called in law, libel per se."

to which portion of such oral charge of the Court these defendants duly and legally excepted. (Tr. 1951 and 1957)

39. For that the trial court erred in its oral charge to the jury wherein the Court instructed the jury as follows:

"We can say as part of the law in this case that a publication is libelous per se when they are such as to degrade the plaintiff in the estimation of his friends and the people of the place where he lives, as injure him in his public office, or impute misconduct to him in his office, or want of official integrity, or want of fidelity to a public trust, or such as will subject the plaintiff to ridicule or public distrust."

[fol. 2172] to which portion of such oral charge of the Court these defendants duly and legally excepted. (Tr. 1952 and 1957)

40. For that the trial court erred in its oral charge to the jury wherein the Court instructed the jury as follows:

"So, as I said, if you are reasonably satisfied from the evidence before you, considered in connection with the rules of law the Court has stated to you, you would

> come to consider the question of damages, and, where as here, the Court has ruled the matter complained of proved to your reasonable satisfaction and aimed at the plaintiff in this case, is libelous per se, then punitive damages may be awarded by the jury even though the amount of actual damages is neither found nor shown."

to which portion of such oral charge of the Court these defendants duly and legally excepted. (Tr. 1953 and 1957)

41. For that the trial court erred in its oral charge to the jury wherein the Court instructed the jury as follows:

> "Now, it is the contention of the plaintiff here that although you may believe, as to the four individual defendants, that they did not sign this advertisement and did not authorize it, yet it is the contention of the plaintiff, Sullivan, that the four individuals, the four individual defendants after knowing of the publication of the advertisement and after knowing of its contents, ratified the use of their names, that is, that they approved and sanctioned this advertisement. In other words, the plaintiff, Sullivan, insists that there was a ratification of the advertisement and the use of their names as signers of the advertisement by the four individual defendants and we here define ratification as the approval by a person of a prior act which did not bind him but which was professedly done on his account or in his behalf whereby the act, the use of his name, the publication, is given effect as if authorized by him in the very beginning. Ratification is really the same as a previous authorization and is a confirmation or approval of what has been done by another on his account."

to which portion of such oral charge of the Court these defendants duly and legally excepted. (Tr. 1953 and 1957)

42. For that the trial court erred in its refusal to these defendants the right to be heard on their motion for a new trial, and which refusal deprived these defendants of their property without due process of law in contravention of their rights pursuant to the Fourteenth Amendment to the Constitution of the United States. (Tr. 2058-2105)

43. For that the trial court erred in its refusal to enter an order or ruling as a matter of record with respect to these defendants' motion for a new trial after repeated request of their attorneys of record in contravention of the due process clause of the Fourteenth Amendment to the Constitution of the United States of America.

44. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the [fol. 2173] request of the defendant, Ralph D. Abernathy:

"T.1. I charge you gentlemen of the jury, to find a verdict in favor of the defendant, Ralph D. Abernathy." Refused, Jones, Judge.

45. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.2. I charge you, gentlemen of the jury, that if you find that the Defendant, Ralph D. Abernathy, did not authorize the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

46. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.3. I charge you, gentlemen of the jury, that if you find that the Defendant, Ralph D. Abernathy, did not consent to the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

47. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.4. I charge you, gentlemen of the jury, that if you find that the Defendant, Ralph D. Abernathy, did not publish on his behalf the article in question which appeared in the New York Times on Tuesday, March

29, 1960, you must find a verdict for him." Refused, Jones, Judge.

48. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.5. I charge you, gentlemen of the jury, that if you find that the defendant, Ralph D. Abernathy, did not authorize anyone to publish on his behalf the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict for him." Refused, Jones, Judge.

49. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.6. I charge you, gentlemen of the jury, that if from the evidence you find that the Defendant, Ralph D. Abernathy, did not directly or through some other person authorize to act for him, publish or consent to the publication of the statements complained of in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

50. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

[fol. 2174] "T.8. I charge you, gentlemen of the jury, that unless from the evidence you are convinced that the Defendant, Ralph D. Abernathy, was the author or the publisher of the advertisement which appeared in the New York Times (the subject matter of this suit) on Tuesday, March 29, 1960, you must return a verdict for said Defendant." Refused, Jones, Judge.

51. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.9. I charge you, gentlemen of the jury, to consider a libel, there must be a publication as well as a writing,

and if the publication was made without the consent of the Defendant, Ralph D. Abernathy, the offense is not complete as to him, and you must return a verdict in favor of him." Refused, Jones, Judge.

52. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.11. I charge you, gentlemen of the jury, that if you find from the evidence that the Defendant, Ralph D. Abernathy, had no knowledge of the writing or publication of the advertisement, prior to publication, that appeared in the New York Times, dated, Tuesday, March 29, 1960, you must return a verdict for the defendant." Refused, Jones, Judge.

53. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.12. I charge you, gentlemen of the jury, that the burden of proof is upon the plaintiff to reasonably satisfy you from the evidence in this case that the Defendant, Ralph D. Abernathy, directly, or indirectly, or through some other person authorized to act for him, published or consented to the publication of the statements complained of which appeared in the New York Times on March 29, 1960, and unless from the evidence you are convinced that said defendant did directly or indirectly or through some other person authorized to act for him, published or consented to the publication of said statements, then you must return a verdict for the defendant, Ralph D. Abernathy." Refused, Jones, Judge.

54. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.13. I charge you, gentlemen of the jury, that if you believe from the evidence that the Defendant, Ralph D. Abernathy, did not authorize the use of his name in connection with the publication of the advertisement

which appeared in the New York Times on March 29, 1960, you must return a verdict for said defendant." Refused, Jones, Judge.

55. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.14. Gentlemen of the jury, if you believe from the evidence that the Defendant, Ralph D. Abernathy, did not consent to the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said defendant." Refused, Jones, Judge.

[fol. 2175] 56. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.16. I charge you, gentlemen of the jury, if from the evidence you believe that the defendant, Ralph D. Abernathy, did not publish or cause to be published the alleged libelous matter contained in the advertisement which appeared in the New York Times on March 29, 1960, then, as a matter of law, there is no legal obligation on the part of this defendant to reply to the letter written by the plaintiff to this defendant demanding a retraction of the alleged libelous matters, and you must return a verdict for said defendant." Refused, Jones, Judge.

57. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.17. I charge you, gentlemen of the jury, that if from the evidence you believe that the defendant never authorized anyone to affix his name to the advertisement which is the subject matter of this suit, and if you further believe from the evidence that the Plaintiff wrote a letter to the Defendant demanding a retraction of certain alleged libelous matter contained in said advertisement, and if you further believe from

the evidence that the Defendant did not reply to the plaintiff letter, I charge you as a matter of law that the Defendant's failure to reply to Plaintiff's letter cannot be considered by you as an admission that he published the alleged libelous matter; under such circumstances the law does not require the Defendant to reply to Plaintiff's letter, and you must return a verdict for the Defendant, Ralph D. Abernathy." Refused, Jones, Judge.

58. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.18. Gentlemen of the jury, if you believe the evidence in this case, you must return a verdict for the defendant, Ralph D. Abernathy." Refused, Jones, Judge.

59. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.19. Gentlemen of the jury, unless from the evidence you are convinced that the defendant, Ralph D. Abernathy consented to the use of his name in connection with the publication of the advertisement complained of, you must find for said defendant." Refused, Jones, Judge.

60. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.20. I charge you, gentlemen of the jury, that unless on the evidence you are convinced that the defendant, Ralph D. Abernathy, had knowledge of the writing or publication of the advertisement complained of, prior to publication in the New York Times, dated Tuesday, March 29, 1960, you must find for the defendant." Refused, Jones, Judge.

61. For that the trial court erred in refusing to give [fols. 2176-2177] the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.1. I charge you, gentlemen of the jury, to find a verdict in favor of the Defendant, Rev. J. E. Lowery." Refused, Jones, Judge.

62. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.2. I charge you, gentlemen of the jury, that if you find that the Defendant, J. E. Lowery, did not authorize the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

63. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.3. I charge you, gentlemen of the jury, that if you find the Defendant, J. E. Lowery, did not consent to the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

64. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.4. I charge you, gentlemen of the jury, that if you find that the Defendant, J. E. Lowery, did not publish or cause to be published the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

65. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.5. I charge you, gentlemen of the jury, that if you find that the Defendant, J. E. Lowery, did not authorize anyone to publish on his behalf the article in question which appeared in the New York Times on

Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

66. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.6. I charge you, gentlemen of the jury, that if from the evidence you find that the Defendant, J. E. Lowery, did not, either directly or through some other person authorized to act for him, publish or consent to the publication of the statements complained of which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

67. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.8. I charge you, gentlemen of the jury, that unless from the evidence you are convinced that the Defen- [fol. 2178] dant, J. E. Lowery, was the author of the publisher of the advertisement which appeared in the New York Times (the subject matter of this suit) on Tuesday, March 29, 1960, you must return a verdict for said Defendant." Refused, Jones, Judge.

68. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.9. I charge you, gentlemen of the jury, to constitute a libel, there must be publication as well as a writing, and if the publication was made without the consent of the Defendant, J. E. Lowery, the offense is not complete as to him and you must return a verdict in favor of him." Refused, Jones, Judge.

69. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.11. I charge you, gentlemen of the jury, that if you find from the evidence that the Defendant, J. E.

Lowery, had no knowledge of the writing or publication of the advertisement, prior to publication, that appeared in the New York Times, dated, Tuesday, March 29, 1960, you must return a verdict for the said Defendant." Refused, Jones, Judge.

70. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.12. I charge you, gentlemen of the jury, that the burden of proof is upon the Plaintiff to reasonably satisfy you from the evidence in this case that the Defendant, J. E. Lowery, directly, or indirectly, or through some other person authorized to act for him, published or consented to the publication of said statements, then you must return a verdict for the defendant, J. E. Lowery." Refused, Jones, Judge.

71. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.13. I charge you, gentlemen of the jury, that if you believe from the evidence that the defendant, J. E. Lowery, did NOT authorize the use of his name in connection with the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant." Refused, Jones, Judge.

72. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.14. Gentlemen of the jury, if you believe from the evidence that the Defendant, J. E. Lowery, did not consent to the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant." Refused, Jones, Judge.

73. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

> [fol. 2179] "T.16. I charge you, gentlemen of the jury, that if from the evidence you believe that the defendant J. E. Lowery, did not publish or cause to be published the alleged libelous matter contained in the advertisement which appeared in the New York Times on March 29, 1960, then, as a matter of law, there was no legal obligation on the part of this defendant to reply to the letter written by the plaintiff to this defendant demanding a retraction of the alleged libelous matters, and you must return a verdict for said defendant." Refused, Jones, Judge.

74. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

> "T.17. I charge you, gentlemen of the jury, that if from the evidence you believe that the defendant never authorized anyone to affix his name to the advertisement which is the subject matter of this suit, and if you further believe from the evidence that the Plaintiff wrote a letter to the Defendant demanding a retraction of certain alleged libelous matter contained in said advertisement, and if you further believe from the evidence that the Defendant did not reply to the Plaintiff's letter, I charge you as a matter of law that the Defendant's failure to reply to Plaintiff's letter cannot be considered by you as an admission that he published the alleged libelous matter; under such circumstances the law does not require the Defendant to reply to Plaintiff's letter, and you must return a verdict for the Defendant, J. E. Lowery." Refused, Jones, Judge.

75. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.18. Gentlemen of the jury, if you believe the evidence in this case, you must return a verdict for the defendant, J. E. Lowery." Refused, Jones, Judge.

76. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.19. Gentlemen of the jury, unless from the evidence you are convinced that the defendant, J. E. Lowery, consented to the use of his name in connection with the publication of the advertisement complained of, you must find for said defendant." Refused, Jones, Judge.

77. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.20. I charge you, gentlemen of the jury, that unless on the evidence you are convinced that the defendant, J. E. Lowery, had knowledge of the writing or publication of the advertisement complained of, prior to publication in the New York Times, dated Tuesday, March 29, 1960, you must find for the defendant." Refused, Jones, Judge.

78. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.1. I charge you, gentlemen of the jury, to find a verdict in favor of the Defendant, S. S. Seay, Sr." Refused, Jones, Judge.

[fol. 2180] 79. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.2. I charge you, gentlemen of the jury, that if you find that the Defendant, S. S. Seay, Sr., did not authorize the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

80. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.3. I charge you, gentlemen of the jury, that if you find that the Defendant, S. S. Seay, Sr., did not consent to the publication of the article in question which appeared in the New York Times on March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

81. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.4. I charge you, gentlemen of the jury, that if you find that the Defendant, S. S. Seay, Sr., did not publish or cause to be published the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

82. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.5. I charge you, gentlemen of the jury, that if you find that the Defendant, S. S. Seay, Sr., did not authorize anyone to publish on his behalf the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

83. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.6. I charge you, gentlemen of the jury, that if from the evidence you find that the Defendant, S. S. Seay, Sr., did not, either directly or through some other person authorized to act for him, publish or consent to the publication of the statements complained of which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

84. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.8. I charge you, gentlemen of the jury, that unless from the evidence you are convinced that the Defendant, S. S. Seay, Sr., was the author or the publisher of the advertisement which appeared in the New York Times (the subject matter of this suit) on Tuesday, March 29, 1960, you must return a verdict for said Defendant." Refused, Jones, Judge.

85. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at [fol. 2181] the request of the defendant, S. S. Seay, Sr.:

"T.9. I charge you, gentlemen of the jury, to constitute a libel, there must be a publication as well as a writing, and if the publication was made without the consent of the Defendant, S. S. Seay, Sr., the offense is not complete as to him and you must return a verdict in favor of him." Refused, Jones, Judge.

86. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.11. I charge you, gentlemen of the jury, that if you find from the evidence that the Defendant, S. S. Seay, Sr., had no knowledge of the writing or publication of the advertisement, prior to publication that appeared in the New York Times, dated, Tuesday, March 29, 1960, you must return a verdict for the said Defendant." Refused, Jones, Judge.

87. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.12. I charge you, gentlemen of the jury, that the burden of proof is upon the Plaintiff to reasonably satisfy you from the evidence in this case that the Defendant, S. S. Seay, Sr., directly, or indirectly, or through some other person authorized to act for him,

published or consented to the publication of the statements complained of which appeared in the New York Times on March 29, 1960, and unless from the evidence you are convinced that said Defendant did directly or indirectly through some other person authorized to act for him, published or consented to the publication of said statements, then you must return a verdict for the defendant, S. S. Seay, Sr." Refused, Jones, Judge.

88. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr."

"T.13. I charge you, gentlemen of the jury, that if you believe from the evidence that the Defendant S. S. Seay, Sr., did NOT authorize the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant." Refused, Jones, Judge.

89. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.14. Gentlemen of the jury, if you believe from the evidence that the Defendant, S. S. Seay, Sr., did not consent to the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant." Refused, Jones, Judge.

90. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.16. I charge you, gentlemen of the jury, if from the evidence you believe that the defendant, S. S. Seay, Sr., did not publish or cause to be published the alleged libelous matter contained in the advertisement which appeared in the New York Times on March 29,

[fol. 2182] 1960, then, as a matter of law, there was no legal obligation on the part of this defendant to reply to the letter written by the plaintiff to this defendant demanding a retraction of the alleged libelous matters, and you must return a verdict for said defendant." Refused, Jones, Judge.

91. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.17. I charge you, gentlemen of the jury, that if from the evidence you believe that the defendant never authorized anyone to affix his name to the advertisement which is the subject matter of this suit, and if you further believe from the evidence that the Plaintiff wrote a letter to the Defendant demanding a retraction of certain alleged libelous matter contained in said advertisement, and if you further to the Plaintiff's letter, I charge you as a matter of law that the Defendant's failure to reply to Plaintiff's letter cannot be considered by you as an admission that he published the alleged libelous matter; under such circumstances the law does not require the Defendant to reply to Plaintiff's letter, and you must return a verdict for the Defendant, S. S. Seay, Sr." Refused, Jones, Judge.

92. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.18. Gentlemen of the jury, if you believe the evidence in this case, you must return a verdict for the defendant, S. S. Seay, Sr." Refused, Jones, Judge.

93. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.19. Gentlemen of the jury, unless from the evidence you are convinced that the defendant, S. S. Seay, Sr., consented to the use of his name in connection with the publication of the advertisement complained of, you must find for the defendant." Refused, Jones, Judge.

94. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

> "T.20. I charge you, gentlemen of the jury, that unless on the evidence you are convinced that the defendant S. S. Seay, Sr. had knowledge of the writing or publication of the advertisement complained of, prior to publication in the New York Times, dated Tuesday, March 29, 1960, you must find for the defendant." Refused, Jones, Judge.

95. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth.

> "T.1. I charge you, gentlemen of the jury, to find a verdict in favor of the Defendant, Fred L. Shuttlesworth." Refused, Jones, Judge.

96. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

> [fol. 2183] "T.2. I charge you, gentlemen of the jury, that if you find that the Defendant, Fred L. Shuttlesworth, did not authorize the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

97. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

> "T.3. I charge you, gentlemen of the jury, that if you find that the Defendant, Fred L. Shuttlesworth, did not consent to the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

98. For that the trial court erred in refusing to give the following written instruction to the jury on this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.4. I charge you, gentlemen of the jury, that if you find that the Defendant, Fred L. Shuttlesworth, did not publish or cause to be published the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict for him." Refused, Jones, Judge.

99. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.5. I charge you, gentlemen of the jury, that if you find that the Defendant, Fred L. Shuttlesworth, did not authorize anyone to publish on his behalf the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

100. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.6. I charge you, gentlemen of the jury, that if from the evidence you find that the Defendant, Fred L. Shuttlesworth, did not, either directly or through some other person authorized to act for him, publish or consent to the publication of the statements complained of which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

101. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.8. I charge you, gentlemen of the jury, that unless from the evidence you are convinced that the Defendant, Fred L. Shuttlesworth, was the author or the publisher of the advertisement which appeared in the New York Times (the subject matter of this suit) on Tuesday, March 29, 1960, you must return a verdict for said Defendant." Refused, Jones, Judge.

102. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.9. I charge you, gentlemen of the jury, to constitute a libel, there must be a publication as well as a writing, and if the publication was made without the consent [fol. 2184] of the Defendant, Fred L. Shuttlesworth, the offense is not complete as to him and you must return a verdict in favor of him." Refused, Jones, Judge.

103. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.11. I charge you, gentlemen of the jury, that if you find from the evidence that the Defendant, Fred L. Shuttlesworth, had no knowledge of the writing or publication of the advertisement prior to publication, that appears in the New York Times, dated, Tuesday, March 29, 1960, you must return a verdict for the said Defendant." Refused, Jones, Judge.

104. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.12. I charge you, gentlemen of the jury, that the burden of proof is upon the plaintiff to reasonably satisfy you from the evidence in this case that the Defendant, Fred L. Shuttlesworth, directly, or indirectly, or through some other person authorized to act for him, published or consented to the publication of the statements complained of which appeared in the New York Times on March 29, 1960, and unless from the evidence you are convinced that said Defendant did directly or indirectly or through some other person authorized to act for him, published or consented to the publication of said statements, then you must return a verdict for the defendant, Fred L. Shuttlesworth." Refused, Jones, Judge.

105. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.13. I charge you, gentlemen of the jury, that if you believe from the evidence that the Defendant, Fred L.

Shuttlesworth, did NOT authorize the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant." Refused, Jones, Judge.

106. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.14. Gentlemen of the jury, if you believe from the evidence that the Defendant, Fred L. Shuttlesworth, did not consent to the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant." Refused, Jones, Judge.

107. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.16. I charge you, gentlemen of the jury, if from the evidence you believe that the defendant Fred L. Shuttlesworth did not publish or cause to be published the alleged libelous matter contained in the advertisement which appeared in the New York Times on March 29, 1960, then, as a matter of law, there was no legal obligation on the part of this defendant to reply to the letter written by the plaintiff to this defendant demanding a retraction of the alleged libelous matters, and you must return a verdict for said defendant." Refused, Jones, Judge.

[fol. 2185] 108. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.17. I charge you, gentlemen of the jury, that if from the evidence you believe that the defendant never authorized anyone to affix his name to the advertisement which is the subject matter of this suit, and if you further believe from the evidence that the plain-

tiff wrote a letter to the defendant demanding a retraction of certain alleged libelous matter contained in said advertisement, and if you further believe from the evidence that the Defendant did not reply to the Plaintiff's letter, I charge you, as a matter of law, that the Defendant's failure to reply to Plaintiff's letter cannot be considered by you as an admission that he published the alleged libelous matter; under such circumstances the law does not require the Defendant to reply to Plaintiff's letter, and you must return a verdict for the Defendant, Fred L. Shuttlesworth." Refused, Jones, Judge.

109. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.18. Gentlemen of the jury, if you believe the evidence in this case, you must return a verdict for the defendant Fred L. Shuttlesworth." Refused, Jones, Judge.

110. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.19. Gentlemen of the jury, unless from the evidence you are convinced that the defendant Fred L. Shuttlesworth consented to the use of his name in connection with the publication of the advertisement complained of, you must find for said defendant." Refused, Jones, Judge.

111. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.20. I charge you, gentlemen of the jury, that unless on the evidence you are convinced that the defendant, Fred L. Shuttlesworth had knowledge of the writing or publication of the advertisement complained of, prior to publication of the advertisement in the New York Times, dated, Tuesday, March 29, 1960, you must find for the defendant." Refused, Jones, Judge.

112. For that the trial court erred in entering its judgment in behalf of the plaintiff in this cause. (Tr. 1958)

113. For that the trial court erred in entering its final judgment of November 3, 1960, in favor of plaintiff and against these defendants in this cause. (Tr. 1958)

114. For that the trial court erred in entering its judgment of November 3, 1960, based upon the verdict of the jury in this cause, in favor of plaintiff and against these defendants. (Tr. 1958)

115. For that the trial court erred in entering its final judgment against these defendants in this cause. (Tr. 1958)

116. For that the trial court erred in overruling these [fol. 2186] defendants' demurrers as amended to plaintiff's complaint and in thereby holding that said complaint stated a cause of action deprived these defendants of their property without due process of law in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States. (Tr. 86)

117. For that the trial court erred in its oral charge to the jury wherein the Court instructed the jury as follows:

> "So, as I said, if you are reasonably satisfied from the evidence before you, considered in connection with the rules of law the Court has stated to you, you would come to consider the question of damage, complained of proved to your reasonable satisfaction and aimed at the plaintiff in this case, is libelous per se, then punitive damages may be awarded by the jury even though the amount of actual damages is neither found nor shown."

and in so instructing the jury the trial court deprived these defendants of their property without due process of law in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States, to which portion of such oral charge of the Court these defendants duly and legally excepted. (Tr. 1953, 1957)

118. For that the trial court erred in its oral charge to the jury wherein the court instructed the jury as follows:

> "So, as I said, if you are reasonably satisfied from the evidence before you, considered in connection with the rules of law the Court has stated to you, you would come to consider the question of damages and, where as here, the Court has ruled the matter complained of proved to your reasonable satisfaction and aimed at the plaintiff in this case, is libelous per se, then punitive damages may be awarded by the jury even though the amount of actual damages is neither found nor shown."

and in so instructing the jury the trial court denied to these defendants the equal protection of the law as guaranteed to them by the provisions of the Fourteenth Amendment to the Constitution of the United States, to which portion of such oral charge of the Court these defendants duly and legally excepted. (Tr. 1953, 1957)

119. For that the trial court erred when it denied these defendants of their rights to be heard on their motion for a new trial on those grounds of said motion numbered 27 stating that there existed an irregularity in the proceedings of the Court by which these defendants were prevented from having a fair trial in that defendants were subjected to the exercise of judicial power before a tribunal which required its very facilities to be segregated on the basis of race and color and that the imposition of judicial power upon defendants in a segregated tribunal denied to defendants their right to due process and equal protection of the law as guaranteed him under the Alabama [fol. 2187] and Federal Constitutions. (Tr. 2063)

120. For that the trial court erred when it denied these defendants of their rights to be heard on their motion for a new trial on those grounds of said motion numbered 26, stating that there existed an irregularity in the proceedings of the Court by which the parties defendant were prevented from having a fair trial in that the Court is a member of the Board of Jury Supervisors of Montgomery, Alabama; and that said Act being unconstitutional, said selection of jurors thereunder by the Court being in violation of Article I, Section 11 of Code of 1901 and the Code of Alabama (1940) Title 7, Section 260, in that the Court

as a member of the Board so selecting those persons who are to decide the case decided both the facts and the law. (Tr. 2063)

121. For that the trial court erred in depriving these defendants of their rights to be heard on their motion for a new trial on those grounds of said motion numbered 30 and 31, stating that the record is so devoid of evidentiary support of the allegations alleged in the complaint in that the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant was legally responsible for the publication of the advertisement which is the basis of this suit, the verdict of the jury and the judgment of the court against the defendant in the sum of $500,000.00 deprived these defendants of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States. (Tr. 2064)

122. For that the trial court erred in depriving these defendants of their rights to be heard on their motion for a new trial on those grounds of said motion numbered 38 and 39, stating that the verdict of the jury is contrary to the law in the case and the facts in the case. (Tr. 2065)

Charles S. Conley, 530 South Union Street, Suite A, Montgomery 4, Alabama;

Vernon Z. Crawford, 578 Davis Avenue, Mobile, Alabama;

By Charles S. Conley, Attorney for Appellants, Ralph D. Abernathy, Fred L. Shuttlesworth, J. E. Lowery, and S. S. Seay, Sr.

[fol. 2188] Certificate of service (omitted in printing).

Without waiving his motion to strike the foregoing purported assignments of error, appellee says there is no error in the record.

M. R. Nachman, Jr., Attorney for Appellee.

[fol. 2188a] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 2189] [Filed April 17, 1961—Supreme Court of Alabama, J. Render Thomas, Clerk.]

On Appeal to Supreme Court of Alabama

From Circuit Court of Montgomery County

The New York Times Company,
A Corporation, Appellant,

vs.

L. B. Sullivan, Appellee.

Certificate of Appeal

The State of Alabama
Montgomery County

I, John R. Matthews, Clerk of the Circuit Court of Montgomery County, hereby certify that in said Court on the 3rd day of November, 1960, in a trial before a jury, a verdict was rendered in favor of L. B. Sullivan and against The New York Times Company, a corporation, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr. and J. E. Lowery for the sum of $500,000.00, and that judgment was thereupon entered against all of said parties for the sum of $500,000.00.

I further certify that the New York Times Company, a corporation, filed its motion to set aside the verdict of the jury and the judgment of the Court entered thereon and to grant it a new trial and that on the 17th day of March, 1961, said motion for a new trial was overruled and that on the 13th day of April, 1961, the said New York Times Company, a corporation, gave notice of appeal from the judgment of said Court to the Supreme Court of Alabama and did supersede said judgment by filing a Supersedeas Bond with St. Paul Fire & Marine Insurance Company as surety thereon, which said bond has been duly approved.

Witness my hand and the seal of said Court is hereto affixed, this 14 day of April, 1961.

John R. Matthews, Clerk, Circuit Court of Montgomery County.

[fol. 2190] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

3d Div., No. 961

THE NEW YORK TIMES COMPANY, Appellant,

v.

L. B. SULLIVAN, Appellee.

MOTION OF APPELLEE TO STRIKE ASSIGNMENTS OF ERROR —Filed September 8, 1961

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Now comes L. B. Sullivan, appellee in the above-entitled cause, by and through his attorneys of record, and moves this Court to strike the purported assignments of error attempted to be filed by Ralph D. Abernathy, Fred L. Shuttlesworth, J. E. Lowery, and S. S. Seay, Sr. (hereinafter called "individual defendants"), and mailed to attorneys for appellee on August 21, 1961; and moves to strike each assignment of error, separately and severally; and, in the alternative, to dismiss the attempted appeal by said persons in this cause, if this Court should construe actions taken heretofore by these persons as an attempt to appeal to this Court; and as grounds assigns to the assignments of error, as a whole and to each assignment separately and severally, the following separate and several grounds:

1. Said individual defendants have not perfected an appeal in this cause in the manner prescribed by the statutes of Alabama, and particularly by Title 7 §§ 776, 788, and 792, Code of Alabama 1940, by filing a good and sufficient security for costs of appeal, approved by the Clerk of the Circuit Court of Montgomery County, Alabama.

2. Said individual defendants have not attempted to perfect an appeal in the manner provided by the statutes of Alabama, and particularly the foregoing specified provisions thereof, by filing a good and sufficient bond for costs of appeal, approved by the Clerk of the Circuit Court of Montgomery County, Alabama.

3. The paper filed in the office of the Clerk of the Circuit Court of Montgomery County, Alabama, by the said individual defendants on April 27, 1961 (R. 2108), is not a compliance with the statutes of Alabama regarding the manner of perfecting an appeal, and particularly with those provisions specified in ground 1 of this motion, and is [fol. 2191] therefore not effective as a timely appeal to this Court from the court below within six months of the date of the final judgment against these said individual defendants, rendered on November 3, 1960.

4. Said individual defendants are not entitled, by virtue of Title 7, § 804, Code of Alabama 1940, to assign separate errors, but are limited to uniting in the errors assigned by appellant The New York Times Company.

5. The purported assignments of error attempted to be filed in this Court by the said individual defendants seek to raise matters beyond the scope of and not involved in the appeal of appellant The New York Times Company. Said purported assignments seek to assign error said to be involved in an asserted holding by the court below that these said individual defendants had failed to continue their motions for new trial; and also seek to assign error relating to grounds of said defunct motion.

6. The paper filed in the Circuit Court of Montgomery County, Alabama, by the said individual defendants (R. 2108), and styled "Notice of Joining in Appeal," will not support an appeal, nor will it support separate and different assignments of error in this Court by the said individual defendants.

7. Appellant The New York Times Company did not appeal from any ruling of the Circuit Court of Montgomery County, Alabama, "that the individual defendants'

motion for a new trial was no longer before the court because of the alleged failure to continue the motion for a new trial by attorneys for the individual defendants," and, accordingly, any such ruling by the Circuit Court of Montgomery County, Alabama, is not before this Court for review; nor are any of the matters sought to be raised in the discontinued motions for new trial filed in the court below by these individual defendants.

8. The paper filed with the Clerk of the Circuit Court of Montgomery County, Alabama (R. 2108), styled "Notice of Joining in Appeal," is not sufficient to constitute an appearance in this Court, and a "uniting" in the appeal of The New York Times Company, within the meaning of Title 7, § 804, Code of Alabama 1940.

Wherefore, premises considered, appellee moves that this Court strike the purported assignments of error as a whole, attempted to be filed by said individual defendants in this Court, as aforesaid; and appellee moves separately and severally that each such purported assignment of error be stricken. And appellee moves, in the alternative, [fol. 2192] that if this Court construe actions heretofore taken by the said individual defendants as an attempt to appeal from the judgment of the Circuit Court of Montgomery County, Alabama, of November 3, 1960, or from any other action of said Court, such appeal be dismissed. And appellee further prays for such other, further, and different relief as this Court may deem appropriate.

Respectfully submitted,

L. B. Sullivan, Appellee, By Sam Rice Baker, M. R. Nachman, Jr., Steiner, Crum & Baker, Attorneys for Appellee.

Certificate of Service (omitted in printing).

[fol. 2193] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

THIRD DIVISION

No. 961

[Title omitted]

MOTION OF INDIVIDUAL APPELLANTS TO DISMISS MOTION TO STRIKE—Filed September 21, 1961

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the State of Alabama:

Come now Ralph D. Abernathy, S. S. Seay, Sr., Fred L. Shuttlesworth, and J. E. Lowery, Appellants in the above action (hereinafter called individual-appellants), by their attorneys, and move this Honorable Court to dismiss the motion filed by the Appellee, L. B. Sullivan, seeking to have this Honorable Court dismiss the assignments of error timely filed in the above action by the individual-appellants herein and to dismiss the appeal presently before this Honorable Court, on the following grounds:

1. That the above named individual-appellants were cited to appeal, pursuant to Title 7, Sec. 801, Code of Alabama, 1940, by the New York Times Company, a Corporation, a co-defendant in an action originally brought in the Circuit Court of Montgomery County, Alabama.

2. That the Appellant, New York Times Company, a Corporation, on the 13th Day of April, 1961, took an appeal to the Supreme Court of Alabama from the judgment rendered in the Circuit Court of Montgomery County, on, to wit, the 3rd day of November, 1960, in favor of L. B. Sullivan, against the New York Times Company, a Corporation, Ralph D. Abernathy, S. S. Seay, Sr., Fred L. Shuttlesworth, and J. E. Lowery, defendants below.

3. That prior to the 27th day of April, 1961, an appeal had not been taken in the name of the individual appellants, Ralph D. Abernathy, S. S. Seay, Sr., Fred L. Shuttlesworth, and J. E. Lowery, nor had they otherwise joined in the appeal.

4. That the individual-appellants were summoned to appeal before this Honorable Court, at the time when the appeal was returnable, and to otherwise unite in said appeal, if the individual appellants deemed it meet and proper.

5. That service of the "citation to appeal" was accepted by their attorney of record and that their said attorney waived further service by the sheriff of Montgomery County, on the 27th day of April, 1961. (See: 1-A, page 2109, of the Transcript filed in the above case.)

[fol. 2194] 6. That the Code of Alabama, 1940, as recomplied in 1958, is identical with the Code of 1907, Sec. 2884, as amended by Gen. Acts 1911, p. 589, which is to the effect that defendants not appealing from a judgment against them may join in another defendant's appeal and assign error. See, *New Morgan County Building & Loan Ass'n* v. *Plemmons,* 210 Ala. 16, 97, So. 46, and where a decree was entered in favor of the complainant, and the first defendant appealed, the second defendant was entitled to join in the appeal even though no citation was issued to the second defendant. *Pickard* v. *Osborn,* 261 Ala. 206, 73 So. 2d 542 (1954).

7. That neither the validity of the above named statute, nor the soundness of the cases decided by this Honorable Court on repeated occasions in reference thereto, is a proper issue in the above styled case of which the Appellee is a party.

8. Wherefore, the individual-appellants respectfully request this Honorable Court to deny Appellee's motion to strike the individual-appellants assignments of error as a whole, to deny Appellee's motion to strike any particular assignment of error, and to further deny in the alternative, Appellee's motion to dismiss the appeal of your individual-appellants.

Charles S. Conley, Attorney for individual-appellants, 530 South Union Street, Montgomery 4, Alabama.

Certificate of Service (omitted in printing).

[fol. 2195]

IN THE SUPREME COURT OF ALABAMA

The Court met pursuant to adjournment.

Present: All the Justices.

[Title omitted]

MINUTE ENTRY OF ARGUMENT AND SUBMISSION
—December 19, 1961

Come the parties by attorneys and argue and submit this cause on motions and on merits for decision.

[fol. 2196]

IN THE SUPREME COURT OF THE STATE OF ALABAMA

Special Term, 1962

3 Div. 961

THE NEW YORK TIMES COMPANY, A Corporation

v.

L. B. SULLIVAN

Appeal from Montgomery Circuit Court

OPINION

HARWOOD, Justice

This is an appeal from a judgment in the amount of $500,000.00 awarded as damages in a libel suit. The plaintiff below was L. B. Sullivan, a member of the Board of [fol. 2197] Commissioners of the City of Montgomery, where he served as Police Commissioner. The defendants below were The New York Times, a corporation, and four individuals, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery.

Service of the complaint upon The New York Times was by personal service upon Dan McKee as an agent of the defendant, and also by publication pursuant to the provisions of Sec. 199(1) of Tit. 7, Code of Alabama 1940.

The Times moved to quash service upon it upon the grounds that McKee was not its agent, and The Times, a foreign corporation, was not doing business in Alabama, and that service under Sec. 199(1) was improper, and to sustain either of the services upon it would be unconstitutional.

After hearing upon the motion to quash, the lower court denied such motion.

In this connection the plaintiff presented evidence tending to show The Times gathers news from national press services, from its staff correspondents, and from string correspondents, sometimes called "stringers."

The Times maintained a staff correspondent in Atlanta, Claude Sitton, who covered eleven southern states, including Alabama.

During the period from 1956 through April 1960, regular staff correspondents of The Times spent 153 days in Alabama to gather news articles for submission to The Times. Forty-nine staff news articles so gathered were introduced in evidence.

Sitton himself was assigned to cover in Alabama, at [fol. 2198] various times, the so-called "demonstrations," the hearings of the Civil Rights Commission in Montgomery, and proceedings in the United States District Court in Montgomery. During his work in Alabama, he also conducted investigations and interviews in such places as Clayton and Union Springs. On some of his visits to Alabama, Sitton would stay as long as a week or ten days.

In May of 1960, he came to Alabama for the purpose of covering the Martin Luther King trial. After his arrival in Montgomery, he "understood" an attempt would be made to serve him. He contacted Mr. Roderick McLeod, Jr., an attorney representing The Times, and was advised to leave Alabama. Shortly after this he called McKee, the "stringer" in Montgomery, and talked generally about the King trial with him.

In addition, The Times made an active effort to keep a resident "stringer" in Montgomery at all times, and as a matter of policy wanted to have three "stringers" in Alabama at all times.

The work of "stringers" was outlined by Sitton as follows: "When The Times feels there is a news story of note going on in an area where a particular stringer lives, * * * The Times calls on a stringer for a story."

"Stringers" fill out blank cards required by The Times, which refer to them as "our correspondents." Detailed instructions are also given to "stringers" by The Times.

"Stringers" also on occasions initiate stories to The Times by telephone recordation. If these stories were not accepted, The Times pays the telephone tolls.

[fol. 2199] A "stringer" is usually employed by another newspaper, or news agency and is called upon for stories occasionally, or offers stories upon his own. A "stringer" is paid at about the rate of a penny a word. No deductions are made from these payments for such things as income tax, social security, insurance contributions, etc., and "stringers" are not carried on the payroll of The Times. Up to July 26 for the year 1960, The Times had paid Chadwick, the "stringer" in Birmingham, $135.00 for stories accepted, and paid McKee $90.00.

It further appears that upon receipt of a letter from the plaintiff Sullivan demanding a retraction and apology for the statements appearing in the advertisement, which is the basis of this suit, the general counsel of The Times in New York requested the Assistant Managing Editor of The Times to have an investigation made of the correctness of the facts set forth in the advertisement in question. The Times thereupon communicated with McKee and asked for a report. After his investigation, McKee sent a lengthy wire to The Times setting forth facts which demonstrated with clarity the utter falsity of the allegations contained in the advertisement. McKee was also paid $25.00 by The Times for help given Harrison Salisbury, a staff correspondent of The Times when he was in Alabama on an assignment in the spring of 1960.

The Times also has a news service and sells to other papers stories sent it by its staff correspondents, "string-

ers," and local reporters. In this connection the lower court observed:

> [fol. 2200] "Obviously, The Times considered the news gathering activities of these staff correspondents and 'stringers' a valuable and unique complement to the news gathering facilities of the Associated Press and other wire services of which The Times is a member. The stories of the 'stringers' appear under the 'slug' 'Special to The New York Times,' and there were 59 such 'specials' in the period from January 1, 1956, through April of 1960."

Advertising

About three quarters of the revenue of The Times comes from advertisements. In 1956, The New York Times Sales, Inc., was set up. This is a wholly owned subsidiary of The Times and its sole function is to solicit advertising for The Times only.

All of the officials of "Sales" are also officials of The Times.

Two solicitors for "Sales," as well as two employees of The Times have at various times come into Alabama seeking advertising for The Times. Between July 1959 and June 3, 1960, one representative spent over a week in this State, another spent a week and a third spent three days. Advertising business was solicited in Birmingham, Montgomery, Mobile, and Selma. Between January 1, 1960 and May 1960, inclusive, approximately seventeen to eighteen thousand dollars worth of advertising was thus sold in Alabama, while in the period of 1956 through April 1960, revenues of $26,801.64 were realized by The Times from Alabama advertisers.

[fol. 2201] Circulation

The Times sends about 390 daily, and 2,500 Sunday editions into Alabama.

Shipments are made by mail, rail, and air, with transportation charges being prepaid by The Times. Dealers are charged for the papers.

Credit is given for unsold papers and any loss in transit is paid by The Times.

Claims for losses are handled by baggagemen in Alabama, and The Times furnishes claim cards to dealers who bring them to the baggagemen, The Times paying for losses or incomplete copies upon substantiation by the local Alabama baggagemen.

Account cards of various Alabama Times dealers show that credit was thus given for unsold merchandise.

We are here confronted with the question of in personam jurisdiction acquired by service upon an alleged representative of a foreign corporation.

The severe limitations of the doctrine of *Bank of Augusta* v. *Earle* (1839) 13 Pet. (U.S.) 519, that a corporation "must dwell in the place of its creation, and cannot migrate to another sovereignty," proving unsatisfactory, the courts, by resort to fictions of "presence," "consent," and "doing business," attempted to find answers compatible with social and economic needs. Until comparatively recent years these bases of jurisdictions have tended only to confuse rather than clarify, leading the late Judge Learned Hand to remark that it was impossible to determine any established rule, but that "we must step from tuft to tuft across the [fol. 2202] morass." *Hutchinson* v. *Chase and Gilbert,* (2nd. Cir.) 45 F. 2d 139.

In *Pennoyer* v. *Neff,* 95 U.S. 714, the court held that the Fourteenth Amendment to the Federal Constitution required a relationship between the State and the person upon whom the State seeks to exercise personal jurisdiction, and there must be a reasonable notification to the person upon whom the State seeks to exercise its jurisdiction. The required relationship between the State and the person was held to be presence within the State, and as a corollary, no state could "extend its process beyond that territory so as to subject either persons or property to its decisions."

In *Hess* v. *Pawloski,* 274 U.S. 352 (1927), the United States Supreme Court sustained the validity of a non-resident motorist statute which provided that the mere act of driving an automobile in a state should be deemed an appointment of a named state official as agent to receive service in a suit arising out of the operation of the motor

vehicle on the highway of such state. The dangerous nature of a motor vehicle was deemed to justify the statute as a reasonable exercise of police power to preserve the safety of the citizens of the state, and the consent for service exacted by the State for use of its highways was reasonable.

In 1935 the same reasoning was applied in upholding a state statute permitting service on an agent of a non-resident individual engaged in the sale of corporate securities in the state in claims arising out of such business. *Henry L. Doherty and Co.* v. *Goodman,* 294 U.S. 623.

Corporations being mere legal entities and incapable of having physical presence as such in a foreign state, and [fol. 2203] its agents being limited by the scope of their employment, neither the "presence" theory nor the "consent" theory could satisfactorily be applied as a basis for personal jurisdiction.

As to personal jurisdiction over non-resident corporations, the rule therefore evolved that such jurisdiction could be based upon the act of such corporations "doing business" in a state, though echoes of the "presence" and "consent" doctrines may be found in some decisions purportedly applying the "doing business" doctrine in suits against foreign corporations. See *Green* v. *Chicago Burlington and Quincy Ry.,* 205 U.S. 530, when "presence" of a corporation was found to exist from business done in a state, and *Old Wayne Mutual Life Ass'n. of Indianapolis* v. *McDonough,* 204 U.S. 8, where implied consent to jurisdiction was said to arise from business done in the state of the forum.

The term "doing business" carries no inherent criteria. It is a concept dependent upon each court's reaction to facts. These reactions were varied, and the conflicting decisions evoked the observation of Judge Learned Hand, then fully justified, but no longer apt since the "morass" has been considerably firmed up by subsequent decisions of the United States Supreme Court.

In *International Shoe Co.* v. *State of Washington, et al.,* 326 U.S. 310, the old bases of personal jurisdiction were recast, the court saying:

> "To say that the corporation is so far 'present' there as to satisfy due process requirements . . . is to beg

> [fol. 2204] the question to be decided. For the terms 'present' or 'presence' are used merely to symbolize those activities of the corporation's agent within the state which courts will deem to be sufficient to satisfy the demands of due process . . . Those demands may be met by such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there. An 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business is relevant in this connection."

That the new test enunciated is dependent upon the degree of contacts and activities exercised in the forum state is made clear, the court saying:

> " . . . due process requires only that in order to subject a defendant to a judgment *in personam,* if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' "

In accord with the above doctrine is our case of *Boyd* v. *Warren Paint and Color Co.,* 254 Ala. 687, 49 So. 2d 559. [fol. 2205] In 1957 the United States Supreme Court handed down its opinion in *McGee* v. *International Life Insurance Co.,* 355 U.S. 220. This case involved the validity of a California judgment rendered in a proceeding where service was had upon the defendant company by registered mail addressed to the respondent at its principal place of business in Texas. A California statute subjecting foreign corporations to suit in California on insurance contracts with California residents even though such corporations could not be served with process within its borders.

The facts show that petitioner's son, a resident of California, bought a life insurance policy from an Arizona corporation, naming petitioner as beneficiary. Later, respondent, a Texas corporation, agreed to assume the insurance

obligations of the Arizona company, and mailed a re-insurance certificate to the son in California, offering to insure him in accordance with his policy. He accepted the offer and paid premiums by mail from California to the company's office in Texas. Neither corporation ever had any office in California, nor any agent therein, nor had solicited or done any other business in that state. Petitioner sent proofs of her son's death to respondent, but it refused to pay the claim.

The Texas court refused to enforce the California judgment holding it void under the Fourteenth Amendment because of lack of valid service. *McGee* v. *International Life Insurance Company,* 288 S.W. 2d 579.

In reversing the Texas court, the United States Supreme Court wrote:

> "Since *Pennoyer* v. *Neff,* 95 U.S. 714, this Court has held that the Due Process Clause of the Fourteenth [fol. 2206] Amendment places some limit on the power of state courts to enter binding judgments against persons not served with process within their boundaries. But just where this line of limitation falls has been the subject of prolific controversy, particularly with respect to foreign corporations. In a continuing process of evolution this Court accepted and then abandoned 'consent,' 'doing business,' and 'presence' as the standard for measuring the extent of state judicial power over such corporations. See Henderson, The Position of Foreign Corporations in American Constitutional Law, c. V. More recently in *International Shoe Co.* v. *Washington,* 326 U.S. 310, the Court decided that 'due process requires only that in order to subject a defendant to a judgment *in personam,* if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' *Id.,* at 316.
>
> "Looking back over this long history of litigation a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents. In part this is at-

> tributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and [fol. 2206a] may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity."

Under the above and more recent doctrines, we are clear to the conclusion that the activities of The New York Times, as heretofore set out, are amply sufficient to more than meet the minimal standards required for service upon its representative McKee.

The adjective "string" in McKee's designation is redundant, and in no wise lessens his status as a correspondent and agent of The New York Times in Alabama. Justice demands that Alabama be permitted to protect its citizens from tortious libels, the effects of such libels certainly occurring to a substantial degree in this State.

Substituted Service

By Act No. 282, approved 5 August 1953 (Acts of Alabama, Reg. Sess. 1953, page 347) amending a prior Act of 1949, it was provided that any non-resident person, firm, partnership or corporation, not qualified to do business in this State, who shall do any business or perform any character of work or service in this State shall by so doing, be deemed to have appointed the Secretary of State to be his lawful attorney or agent of such non-resident, upon [fol. 2207] whom process may be served in any action accruing from the acts in this State, or incident thereto, by any non-resident, or his or its agent, servant or employee.

The act further provides that service of process may be made by service of three copies of the process on the Secretary of State, and such service shall be sufficient service upon the non-resident, provided that notice of such service and a copy of the process are forthwith sent by

registered mail by the Secretary of State to the defendant, at his last known address, which shall be stated in the affidavit of the plaintiff, said matter so mailed shall be marked "Deliver to Addressee Only" and "Return Receipt Requested," and provided further that such return receipt shall be received by the Secretary of State purporting to have been signed by the said non-resident.

It is further provided in the Act that any party desiring to obtain service under the Act shall make and file in the cause an affidavit stating facts showing that this Act is applicable.

A mere reading of the above Act demonstrates the sufficiency of the provisions for notice to the non-resident defendant, and that service under the provisions of the Act fully meet the requirements of due process.

Counsel for appellant argues however that the service attempted under Act 282, supra, is defective in two aspects. First, that the affidavit accompanying the complaint is conclusionary and does not show facts bringing the Act into operation, and second, that the Act complained of did not accrue from acts done in Alabama.

[fol. 2208] The affidavit filed by the plaintiff avers that the defendant " * * * has actually done and is doing business or performing work or services in the State of Alabama; that this cause of action has arisen out of the doing of such business or as an incident thereof by said defendant in the State of Alabama."

The affidavit does state facts essential to the invocation of Act 282, supra. We do not think the legislative purpose in requiring the affidavit was to require a detailed quo modo of the business done, but rather was to furnish the Secretary of State with information sufficient upon which to perform the duties imposed upon that official. The ultimate determination of whether the non-resident has done business or performed work or services in this State, and whether the cause of action accrues from such acts, is judicial, and not ministerial, as demonstrated by appellant's motion to quash.

As to appellant's second contention that the cause did not accrue from any acts of The Times in Alabama, it is our conclusion that this contention is without merit.

Equally applicable to newspaper publishing are the observations made in *Consolidated Cosmetics* v. *D-A Pub. Co., Inc., et al.,* 186 F. 2d 906 at 908, relative to the functions of a magazine publishing company:

> "The functions of a magazine publishing company, obviously, include gathering material to be printed, obtaining advertisers and subscribers, printing, selling and delivering the magazines for sale. Each of these, [fol. 2209] we think, constitutes an essential factor of the magazine publication business. Consequently if a non-resident corporation sees fit to perform any one of those essential functions in a given jurisdiction, it necessarily follows that it is conducting its activities in such a manner as to be subject to jurisdiction."

It is clear under our decisions that when a non-resident prints a libel beyond the boundaries of the State, and distributes and publishes the libel in Alabama, a cause of action arises in Alabama, as well as in the State of the printing or publishing of the libel. *Johnson Publishing Co.* v. *Davis,* 271 Ala. 474, 124 So. 2d 441; *Weir* v. *Brotherhood of Railroad Trainmen,* 221 Ala. 494, 129 So. 267; *Bridwell* v. *Brotherhood of Railroad Trainmen,* 227 Ala. 443, 150 So. 338; *Collins* v. *Brotherhood of Railroad Trainmen,* 226 Ala. 659, 148 So. 133.

The scope of substituted service is as broad as the permissible limits of due process. *Boyd* v. *Warren Paint & Color Co.,* 254 Ala. 687, 49 So. 2d 559; *Ex parte Emerson,* 270 Ala. 697, 121 So. 2d 914.

The evidence shows that The Times sent its papers into Alabama, with its carrier as its agent, freight prepaid, with title passing on delivery to the consignee. See Tit. 57, Sec. 25, Code of Alabama 1940; *2 Williston on Sales,* Sec. 279(b), p. 90. Thence the issue went to newsstands for sale to the public in Alabama, in accordance with a long standing business practice.

[fol. 2210] The Times or its wholly owned advertising subsidiary, on several occasions, had agents in Alabama for substantial periods of time soliciting, and procuring in substantial amounts advertising to appear in The Times.

Furthermore, upon the receipt of the letter from the plaintiff demanding a retraction of the matter appearing in the advertisement, The Times had its string correspondent in Montgomery, Mr. McKee, investigate the truthfulness of the assertions in the advertisement. The fact that McKee was not devoting his full time to the service of The Times is "without constitutional significance." *Scripto Inc.* v. *Carson, Sheriff, et al.,* 362 U.S. 207.

In *WSAZ, Inc.* v. *Lyons,* 254 F. 2d 242 (6th Cir.), the defendant television corporation was located in West Virginia. Its broadcasts covered several counties in Kentucky, and the defendant contracted for advertising in the Kentucky counties, all contracts for such advertising being sent to the corporation in West Virginia for acceptance.

The alleged libel sued upon occurred during a news broadcast.

Service was obtained by serving the Kentucky Secretary of State under the provisions of a Kentucky statute providing for such service upon a foreign corporation doing business in Kentucky where the action arose out of or was "connected" with the business done by such corporation in Kentucky.

In sustaining the judgment awarded the plaintiff, the court wrote in connection with the validity of the service to support the judgment:

> [fol. 2211] "All that is necessary here is that the cause of action asserted shall be 'connected' with the business done. Defendant asserts that the alleged libel has no connection with its business done in Kentucky. But in view of its admission that its usual business was the business of telecasting and that this included news programs, and in view of the undisputed fact that the alleged libel was part of news programs regularly broadcast by defendant, this contention has no merit.
>
> "The question of due process would seem to be settled by the case of *McGee* v. *International Life Insurance Co.* (citation), as well as by *International Shoe Co.* v. *State of Washington,* supra. While defendant was not present in the territory of the forum, it certainly had substantial contacts with it. It sought and

> executed contracts for the sale of advertising service to be performed and actually performed by its own act within the territory of the forum. We conclude that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' "

In the present case the evidence shows that the publishing of advertisements was a substantial part of the business of The Times, and its newspapers were regularly sent into Alabama. Advertising was solicited in Alabama. Its correspondent McKee was called upon by The Times to [fol. 2212] investigate the truthfulness or falsity of the matters contained in the advertisement after the letter from the plaintiff. The acts therefore disclose not only certain general conditions with reference to newspaper publishing, but also specific acts directly connected with, and directly incident to the business of The Times done in Alabama.

The service acquired under the provisions of Act No. 282, supra, was valid.

General Appearance by The Times

The trial court also found that The Times, by including as a ground of the prayer in its motion to quash, the following, " * * * that this court dismiss this action as to The New York Times Company, A Corporation, for lack of jurisdiction of the subject matter of said action * * * " did thereby go beyond the question of jurisdiction over the corporate person of The Times, and made a general appearance, thereby waiving any defects in service of process, and thus submitted its corporate person to the jurisdiction of the court.

The conclusions of the trial court in this aspect are in accord with the doctrines of a majority of our sister states, and the doctrines of our own decisions.

Pleadings based upon lack of jurisdiction of the person are in their nature pleas in abatement, and find no special favor in the law. They are purely dilatory and amount to no more than a declaration by a defendant that he is in court in a proper action, after actual notice, but because of a defect in service, he is not legally before the court. See *Olcese* v. *Justice's Court,* 156 Cal. 82, 103 P. 317.

[fol. 2213] In *Roberts* v. *Superior Court,* 30 Cal. App. 714, 159 P. 465, the court observed:

> "The motion to dismiss the complaint on the ground that the court was without jurisdiction of the subject-matter of the action amounted, substantially or in legal effect, to a demurrer to the complaint on that ground. At all events, a motion to dismiss on the ground of want of jurisdiction of the subject-matter of the action necessarily calls for relief which may be demanded only by a party to the record. It has been uniformly so held, as logically it could not otherwise be held, and, furthermore, that where a party appears and asks for such relief, although expressly characterizing his appearance as special and for the special purpose of objecting to the jurisdiction of the court over his person, he as effectually submits himself to the jurisdiction of the court as though he had legally been served with process."

The reason dicting such conclusion is stated by the Supreme Court of North Carolina, in *Dailey Motor Co.* v. *Reaves,* 184 N. C. 260, 114 S.E. 175, to be:

> "Any course that, in substance, is the equivalent of an effort by the defendants to try the matter and obtain a judgment on the merits, in any material aspect of the case, while standing just outside the threshold of the court, cannot be permitted to avail them. A party [fol. 2214] will not be allowed to occupy so ambiguous a position. He cannot deny the authority of the court to take cognizance of his action for want of jurisdiction of the person or proceeding, and at the same time seek a judgment in his favor on the ground that there is no jurisdiction of the cause of action.
>
> * * * * * * *
>
> "We might cite cases and authorities indefinitely to the same purpose and effect, but those to which we have briefly referred will suffice to show how firmly and unquestionably it is established, that it is not only dangerous, but fatal to couple with a demurrer, or

> other form of objection based on the ground that the court does not have jurisdiction of the person, an objection in the form of a demurrer, answer, or otherwise, which substantially pleads to the merits, and, as we have seen, such an objection is presented when the defendant unites with his demurrer for lack of jurisdiction of the person a cause of demurrer for want of jurisdiction of the cause or subject of the action, and that is exactly what was done in this case."

We will not excerpt further from the decisions from other jurisdictions in accord with the doctrine of the above cases, but point out that innumerable authorities from a [fol. 2215] large number of states may be found set forth in an annotation to be found in 25 A.L.R. 2d, pages 838 through 842.

In *Thompson* v. *Wilson,* 224 Ala. 299, 140 So. 439, this court stated:

> "If there was a general appearance made in this case, the lower court had jurisdiction of the person of the appellant. (Authorities cited.)
>
> "The filing of a demurrer, unless based solely on the ground of lack of jurisdiction of the person, constitutes a general appearance."

Again, in *Blankenship* v. *Blankenship,* 263 Ala. 297, 82 So. 2d 335, the court reiterated the above doctrine.

Thus the doctrine of our cases is in accord with that of a majority of our sister states that despite an allegation in a special appearance that it is for the sole purpose of questioning the jurisdiction of the court, if matters going beyond the question of jurisdiction of the person are set forth, then the appearance is deemed general, and defects in the service are to be deemed waived.

We deem the lower court's conclusions correct, that The Times, by questioning the jurisdiction of the lower court over the subject matter of this suit, made a general appearance, and thereby submitted itself to the jurisdiction of the lower court.

Appellant's assignment No. 9 is to the effect that the lower court erred in overruling defendant's demurrers as [fol. 2216] last amended to plaintiff's complaint.

The defendant's demurrers contain a large number of grounds, and the argument of the appellant is directed toward the propositions that:

1. As a matter of law, the advertisement was not published of and concerning the plaintiff, as appears in the face of the complaint.

2. The publication was not libelous per se.

3. The complaint was defective in failing to allege special damages.

4. The complaint was defective in failing to allege facts or innuendo showing how plaintiff claimed the article had defamed him.

5. The complaint was bad because it stated two causes of action.

Both counts of the complaint aver among other things that " * * * defendants falsely and maliciously published in the City of New York, State of New York, and in the City of Montgomery, Alabama, and throughout the State of Alabama, of and concerning the plaintiff, in a paper entitled The New York Times, in the issue of March 29, 1960, on page 25, in an advertisement entitled 'Heed Their Rising Voices' (a copy of said advertisement being attached hereto and made a part hereof as Exhibit 'A'), false and defamatory matter or charges reflecting upon the conduct of the plaintiff as a member of the Board of Commissioners of the City of Montgomery, Alabama, and imputing improper conduct to him, and subjecting him to public contempt, ridicule and shame, and prejudicing the plaintiff in his office, profession, trade or business, with an intent to [fol. 2217] defame the plaintiff, and particularly the following false and defamatory matter contained therein:

'In Montgomery, Alabama, after students sang "My Country 'Tis of Thee" on the State Capitol steps, their leaders were expelled from school, and truckloads of

police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission.

* * * * * * *

'Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for "speeding," "loitering," and similar "offenses." And now they have charged him with "perjury"—a *felony* under which they could imprison him for *ten years.*' "

Where the words published tend to injure a person libeled by them in his reputation, profession, trade or business, or charge him with an indictable offense, or tends to bring the individual into public contempt are libelous per se. *White* v. *Birmingham Post Co.,* 233 Ala. 547, 172 So. 649; *Iron Age Pub. Co.* v. *Crudup,* 85 Ala. 519, 5 So. 332. [fol. 2218] Further, "the publication is not to be measured by its effects when subjected to the critical analysis of a trained legal mind, but must be construed and determined by its natural and probable effect upon the mind of the average reader." *White* v. *Birmingham Post Co.,* supra.

We hold that the matter complained of is, under the above doctrine, libelous per se, if it was published of and concerning the plaintiff.

In "Dangerous Words—A Guide to the Law of Libel," by Philip Wittenberg, we find the following observations, at pages 227 and 228:

"There are groupings which may be finite enough so that a description of the body is a description of the members. Here the problem is merely one of evaluation. Is the description of the member implicit in the description of the body, or is there a possibility that a description of the body may consist of a variety of persons, those included within the charge, and those excluded from it?

* * * * * * *

> "The groupings in society today are innumerable and varied. Chances of recovery for libel of the members of such groups diminish with increasing size, and increase as the class or group decreases. Whenever a class decreases so that the individuals become obvious, they may recover for a libel descriptive of the group. In cases where the group is such that it is [fol. 2219] definite in number; where its composition is easily recognizable and the forms of its organization are apparent, then recognition of individuals libeled by group defamation becomes clear."

The same principle is aptly stated in *Gross* v. *Cantor,* 270 N.Y. 93, as follows:

> "An action for defamation lies only in case the defendant has published the matter 'of and concerning the plaintiff.' . . . Consequently an impersonal reproach of an indeterminate class is not actionable . . . . 'But if the words may by any reasonable application, import a charge against several individuals, under some general description or general name, the plaintiff has the right to go on to trial, and it is for the jury to decide whether the charge has the personal application averred by the plaintiff.'
>
> "We cannot go beyond the face of this complaint. It does not there appear that the publication was so scattered a generality or described so large a class as such that no one could have been personally injured by it. Perhaps the plaintiff will be able to satisfy a jury of the reality of his position that the article was directed at him as an individual and did not miss the mark."

[fol. 2220] And in *Wofford* v. *Meeks,* 129 Ala. 349, 30 So. 625, we find this court saying:

> "Mr. Freeman, in his note to case of *Jones* v. *The State,* 70 Am. St. Rep. 756, after reviewing the cases, says: 'We apprehend the true rule is that, although the libelous publication is directed against a particular class of persons or a group, yet any one of that class

> or group may maintain an action upon showing that the words apply especially to him.' And, further, he cites the cases approvingly which hold that each of the persons composing the class may maintain the action. We think this the correct doctrine, and it is certainly supported by the great weight of authority.—13 Am. & Eng. Ency. Law, 392 and note 1; *Hardy* v. *Williamson,* 86 Ga. 551; s.c. 22 Am. St. Rep. 479."

We judicially know that the City of Montgomery operates under a commission form of government. (See Act 20, Gen. Acts of Alabama 1931, page 30.) We further judicially know that under the provisions of Sec. 51, Tit. 37, Code of Alabama 1940, that under this form of municipal government the executive and administrative powers are distributed into departments of (1) public health and public safety, (2) streets, parks and public property and improvements, and, (3) accounts, finances, and public affairs; and that the assignments of the commissioners may be changed at any time by a majority of the board.

[fol. 2221] The appellant contends that the word "police" encompasses too broad a group to permit the conclusion that the statement in the advertisement was of and concerning the plaintiff since he was not mentioned by name.

We think it common knowledge that the average person knows that municipal agents, such as police and firemen, and others, are under the control and direction of the city governing body, and more particularly under the direction and control of a single commissioner. In measuring the performance or deficiencies of such groups, praise or criticism is usually attached to the official in complete control of the body. Such common knowledge and belief has its origin in established legal patterns as illustrated by Sec. 51, supra.

In *De Hoyos* v. *Thornton,* 259 N.Y. App. Div. 1, a resident of Monticello, New York, a town of 4000 population, had published in a local newspaper an article in which she stated that a proposed acquisition of certain property by the municipality was "another scheme to bleed the taxpayers and force more families to lose their homes. * * * It seems to me it might be better to relieve the tension on

the taxpayers right now and get ready for the golden age * * * and not be dictated to by gangsters and Chambers of Commerce."

The mayor and the three trustees of Monticello brought libel actions. The court originally considering the complaint dismissed the actions on the grounds that the plaintiffs were not mentioned in the article, and their connection with the municipality was not stated in the complaint. [fol. 2222] In reversing this decision the Appellate Division of the Supreme Court wrote: "There is no room for doubt as to who were the targets of her attack. Their identity is as clear to local readers from the article as if they were mentioned by name."

The court did not err in overruling the demurrer in the aspect that the libelous matter was not of and concerning the plaintiffs.

The advertisement being libelous per se, it was not necessary to allege special damages in the complaint. *Iron Age Pub. Co.* v. *Crudup,* 85 Ala. 519, 5 So. 332.

Where, as in this case, the matter published is libelous per se, then the complaint may be very simple and brief (*Penry* v. *Dozier,* 161 Ala. 292, 49 So. 909), and there is no need to set forth innuendo. *White* v. *Birmingham Post Co.,* 233 Ala. 547, 172 So. 649. Further, a complaint in all respects similar to the present was considered sufficient in our recent case of *Johnson Publishing Co.* v. *Davis,* 271 Ala. 474, 124 So. 2d 441.

The *Johnson* case, supra, is also to the effect that where a newspaper publishes a libel in New York, and by distribution of the paper further publishes the libel in Alabama, a cause of action arises in Alabama, as well as in New York, and that the doctrine of *Age-Herald Pub. Co.* v. *Huddleston,* 207 Ala. 40, 92 So. 193, concerned venue, and venue statutes do not apply to a foreign corporation not qualified to do business in Alabama.

In view of the principles above set forth, we hold that the lower court did not err in overruling the demurrer [fol. 2223] to the complaint in the aspects contended for and argued in appellant's brief.

Assignments of error Nos. 14, 15, 16 and 17, relate to the court's refusal to permit certain questions to be put to the venire in qualifying the jurors.

The appellant contends that The Times was unlawfully deprived of its right to question the jury venire to ascertain the existence of bias or prejudice. The trial court refused to allow four questions which were in effect, (1) Do you have any conviction, opinion or pre-disposition which would compel you to render a verdict against The Times? (2) Have any of you been plaintiffs in litigation in this court? (3) If there is no evidence of malice, would you refuse to punish The Times? (4) Is there any reason which would cause you to hesitate to return a verdict in favor of The Times?

The prospective jurors had already indicated that they were unacquainted with any of the facts in the case, that they had not discussed the case with anyone nor had it been discussed in their presence nor were they familiar in any manner with the contentions of the parties. Appellant was permitted to propound at some length other questions designed to determine whether there was any opinion or pre-disposition which would influence the juror's judgment. The jurors indicated that there was no reason whatsoever which would cause them to hesitate to return a verdict for The Times.

Sec. 52, Tit. 30, Code of Alabama 1940, gives the parties a broad right to interrogate jurors as to interest or bias. This right is limited by propriety and pertinence. It is [fol. 2224] exercised within the sound discretion of the trial court. We cannot say that this discretion has been abused where similar questions have already been answered by the prospective jurors. *Dyer* v. *State,* 241 Ala. 679, 4 So. 2d 311.

Only the second question could have conceivably revealed anything which was not already brought out by appellant's interrogation of the prospective jurors. Considering the completeness of the qualification and the remoteness of the second question, the exclusion of that inquiry by the trial court will not be regarded as an abuse of discretion. *Noah* v. *State,* 38 Ala. App. 531, 89 So. 2d 231.

Appellant contends that without the right to adequately question the prospective jurors, a defendant cannot adequately ensure that his case is being tried before a jury which meets the federal constitutional standards laid down

in such decisions as *Irvin* v. *Dowd,* 366 U.S. 717. It is sufficient to say that the jurors who tried this case were asked repeatedly, and in various forms, by counsel for The Times about their impartiality in every reasonable manner.

Appellant's assignment of error 306 pertains to the refusal of requested charge T. 22, which was affirmative in nature.

It is appellant's contention that refusal of said charge contravenes Amendment One of the United States Constitution and results in an improper restraint of freedom of the press, and further, that refusal of said charge is violative of the Fourteenth Amendment of the federal constitution.

[fol. 2225] In argument in support of this assignment, counsel for appellant asserts that the advertisement was only an appeal for support of King and "thousands of Southern Negro students" said to be "engaged in widespread non-violent demonstrations in positive affirmation of the right to live in human dignity as guaranteed by the U. S. Constitution and the Bill of Rights."

The fallacy of such argument is that it overlooks the libelous portions of the advertisement which are the very crux of this suit.

The First Amendment of the U. S. Constitution does not protect libelous publications. *Near* v. *Minnesota,* 283 U.S. 697; *Konigsberg* v. *State Bar of California,* 366 U.S. 36; *Times Film Corporation* v. *City of Chicago,* 365 U.S. 43; *Chaplinsky* v. *New Hampshire,* 315 U.S. 568; *Beauharnais* v. *Illinois,* 343 U.S. 250.

The Fourteenth Amendment is directed against State action and not private action. *Collins* v. *Hardyman,* 341 U.S. 651.

Assignment of error No. 306 is without merit.

Appellant's assignment of error No. 94 also pertains to the court's refusal of its requested charge T. 22.

Appellant's argument under this assignment asserts it was entitled to have charge T. 22 given because of the plaintiff's failure to plead or prove special damages.

In libel action, where the words are actionable per se, the complaint need not specify damages (*Johnson* v. *Robertson,* 8 Port. 486), nor is proof of pecuniary injury re-

quired, such injury being implied. *Johnson Publishing Co.* v. *Davis,* supra.

Assignments 18, 19, 21, 23, 25, 27, 30, and 32, relate to the action of the court in overruling defendant's objections [fol. 2226] to questions propounded to six witnesses presented by the plaintiff as to whether they associated the statements in the advertisement with the plaintiff. All of the witnesses answered such questions in such manner as to indicate that they did so associate the advertisement.

Without such evidence the plaintiff's cause would of necessity fall, for that the libel was of or concerning the plaintiff is the essence of plaintiff's claim.

Section 910 of Title 7, Code of Alabama 1940, pertaining to libel, among other things, provides that " * * * and if the allegation be denied, the plaintiff must prove, on the trial, the facts showing that the defamatory matter was published or spoken of him." This statute would seem to require the proof here admitted. And in *Wofford* v. *Meeks,* 129 Ala. 349, 30 So. 625, the court stated that where the libel is against a group, any one of that group may maintain an action "upon a showing that the words apply specially to him," and in *Chandler* v. *Birmingham News Co.,* 209 Ala. 208, 95 So. 886, this court said, "Any evidence which tended to show it was not 'of and concerning the plaintiff' was material and relevant to the issue."

In *Hope* v. *Hearst Consolidated Publications,* (2nd Cir. 1961), 294 Fed. 2d 681, the court said as to the admissibility of testimony that a witness believed the defamatory matter referred to the plaintiff:

> "In this regard it appears that the New York exclusionary rule represents a distinct, if not a lone, minority voice. The vast majority of reported cases, from both American and British courts, espouse the admission of such evidence; the text writers similarly advocate its admissibility.
>
> * * * * * * *
>
> [fol. 2227] "The plaintiff as a necessary element in obtaining relief, would have to prove that the coercive lies were understood by customers, to be aimed at him. In cases where the plaintiff was not specifically named, the exact issue now before us would be presented."

In accord with the doctrine that the instant evidence was admissible may be cited, among other authorities *Marr* v. *Putnam Oil Co.,* (Or.), 246 P. 2d 509; *Red River Valley Pub. Co., Inc.* v. *Bridges,* (Tex. Civ. Ap.) 254 S.W. 2d 854; *Colbert* v. *Journal Pub. Co.* (N.M.) 142 P. 146; *Prosser* v. *Callis et al.* (Ind.) 19 N.E. 735; *Martin County Bank* v. *Day* (Minn.) 75 N.W. 1115; *Ball* v. *Evening American Pub. Co.* (Ill.) 86 N.E. 1097; *Children* v. *Shinn* (Iowa) 150 N.W. 864.

Appellant's assignments of error 22, 26, 28, 31, 33, and 34, relate to the action of the court in overruling objections to certain questions propounded to plaintiff's witnesses Blackwell, Kaminsky, Price, Parker, and White, which questions were to the effect that if the witnesses believed the matter contained in the advertisement, would they have thought less of the plaintiff.

Counsel for appellant argues that the questions " * * * inescapably carried the implication that the witness thought the ad was published of and concerning the plaintiff." Each and every one of the above named witnesses had testified previous to the instant questions, that they had associated the City Commissioners, or the plaintiff, with the advertisement upon reading it. The questions were therefore based upon the witnesses' testimony that they associated the advertisement with the plaintiff, and not merely an implication that might be read into the question. [fol. 2228] Counsel further argues that the question is hypothetical in that none of the witnesses testified they believed the advertisement, or that they thought less of the plaintiff.

While we think such evidence of small probative value, yet it would have relevancy not only as to its effect upon the recipient, but also as to the effect such publication may reasonably have had upon other recipients. See "Defamation," 69 Harv. L. R., 877, at 884.

This aside, we cannot see that the answers elicited were probably injurious to the substantial rights of the appellant. Sup. Court Rule 45. Proof of common knowledge is without injury, though it be unnecessary to offer such proof.

Clearly we think it common knowledge that publication of matter libelous per se would, if believed, lessen the per-

son concerned in the eyes of any recipient of the libel. See *Tidmore* v. *Mills,* 33 Ala. App. 243, 32 So. 2d 769, and cases cited therein.

Assignment of error No. 63 asserts error arising out of the following instance during the cross-examination of Gershon Aronson, a witness for The Times, which matter, as shown by the record, had been preceded by numerous objections, and considerable colloquy between counsel and court:

> "Q. Would you state now sir, what that word means to you; whether it has only a time meaning or whether it also to your eye and mind has a cause and effect meaning?
>
> "Mr. Embry: Now, we object to that, Your Honor. That's a question for the jury to determine—
> [fol. 2229] "The Court: Well, of course, it probably will be a question for the jury, but this gentleman here is a very high official of The Times and I should think he can testify—
> "Mr. Daly: I object to that, Your Honor. He isn't a high official of The Times at all—
> "Mr. Embry: He is just a man that has a routine job there, Your Honor. He is not—
> "The Court: Let me give you an exception to the Court's ruling.
> "Mr. Embry: We except."

We do not think it can be fairly said that the record discloses a ruling by the trial court on counsel's objection to the use of the term "very high official." The ruling made by the court is palpably to the question to which the objection was interposed. Counsel interrupted the court to object to the term "very high official," and second counsel added, "He is just a man that has a routine job there, Your Honor." Apparently this explanation satisfied counsel, as the court's use of the term was not pursued to the extent of obtaining a ruling upon this aspect, and the court's ruling was upon the first, and main objection.

Mr. Aronson testified that he had been with The Times for twenty-five years, and was Assistant Manager of the

Advertising Acceptability Department of The Times, and was familiar with the company's policies regarding advertising in all its aspects, that is, sales, acceptability, etc., and that advertisements of organizations and committees that express a point of view comes within the witness's particular duties.

[fol. 2230] In view of the above background of Mr. Aronson, and the state of the record immediately above referred to, we are unwilling to cast error upon the lower court in the instance brought forth under assignment No. 63.

Assignment of error No. 81 is to the effect that the lower court erred in denying appellant's motion for a new trial. Such an assignment is an indirect assignment of all of the grounds of the motion for a new trial which appellant sees fit to bring forward and specify as error in his brief.

The appellant under this assignment has sought to argue several grounds of its motion for a new trial.

Counsel, in this connection, seeks to cast error on the lower court because of an alleged prejudicial statement made by counsel for the appellee in his argument to the jury.

The record fails to show any objections were interposed to any argument by counsel for any of the litigants during the trial. There is therefore nothing presented to us for review in this regard. *Woodward Iron Co.* v. *Earley,* 247 Ala. 556, 25 So. 2d 267, and cases therein cited.

Counsel also argues two additional grounds contained in the motion for a new trial, (1) that the appellant was deprived of due process in the trial below because of hostile articles in Montgomery newspapers, and (2) because of the presence of photographers in the courtroom and the publication of the names and pictures of the jury prior to the rendition of the verdict.

As to the first point, the appellant sought to introduce in the hearing on the motion for a new trial newspaper articles dated prior to, and during, the trial. The court refused to admit these articles.

[fol. 2231] At no time during the course of the trial below did the appellant suggest a continuance, or a change of venue, or that it did not have knowledge of said articles.

Likewise, at no time was any objection interposed to the presence of photographers in the courtroom.

Newly discovered evidence was not the basis of the motion for a new trial. This being so, the court was confined upon the hearing on the motion to matters contained in the record of the trial. *Thomason* v. *Silvey,* 123 Ala. 694, 26 So. 644; *Alabama Gas Co.* v. *Jones,* 244 Ala. 413, 13 So. 2d 873.

Assignment of error 78 pertains to an alleged error occurring in the court's oral charge.

In this connection the record shows the following:

> "Mr. Embry: We except, your Honor. We except to the oral portions of Your Honor's Charge wherein Your Honor charged on libel per se. We object to that portion of Your Honor's Charge wherein Your Honor charged as follows: 'So, as I said, if you are reasonably satisfied from the evidence before you, considered in connection with the rules of law the Court has stated to you, you would come to consider the question of damages and, where as here, the Court has ruled the matter complained of proved to your reasonable satisfaction and aimed at the plaintiff in this case, [fol. 2232] is libelous per se then punitive damages may be awarded by the jury even though the amount of actual damages is neither found nor shown.'
>
> "The Court: Overruled and you have an exception."

Preceding the above exception the court had instructed the jury as follows:

> "Now, as stated, the defendants say that the ad complained of does not name the plaintiff, Sullivan, by name and that the ad is not published of and concerning him. . . . The plaintiff, Sullivan, as a member of the group referred to must show by the evidence to your reasonable satisfaction that the words objected to were spoken of and concerning him. The reason for this being that while any one of a class or group may maintain an action because of alleged libelous words, he must show to the reasonable satisfaction of the

jury that the words he complained of apply especially to him or are published of and concerning him.

* * * * * * *

"So, at the very outset of your deliberations you come to this question: Were the words complained of in counts 1 and 2 of this complaint spoken of and concerning the plaintiff, Sullivan? That's the burden he [fol. 2233] has. He must show that to your reasonable satisfaction and if the evidence in this case does not reasonably satisfy you that the words published were spoken of or concerning Sullivan or that they related to him, why then of course he would not be entitled to any damages and you would not go any further."

In addition the court gave some eleven written charges at defendant's request, instructing the jury in substance that the burden was upon the plaintiff to establish to the reasonable satisfaction of the jury that the advertisement in question was of and concerning the plaintiff, and that without such proof the plaintiff could not recover.

It is to be noted that in the portion of the complained of instructions excerpted above, the court first cautioned the jury they were to consider the evidence in connection with the rules of law stated to them. The court had previously made it crystal clear that the jury were to determine to their reasonable satisfaction from the evidence that the words were spoken of and concerning the plaintiff.

Counsel for appellant contend that because of the words "and aimed at the plaintiff in this case," the instruction would be taken by the jury as a charge that the advertisement was of and concerning the plaintiff, and hence the instruction was invasive of the province of the jury.

Removed from the full context of the court's instructions the charge complained of, because of its inept mode of expression, might be criticized as confused and misleading. [fol. 2234] However, it is basic that a court's oral charge must be considered as a whole and the part excepted to should be considered in the light of the entire instruction. If as a whole the instructions state the law correctly, there is no reversible error even though a part of the instructions, if considered alone, might be erroneous.

Innumerable authorities enunciating the above doctrines may be found in 18 Ala. Dig., Trial, Key Nos. 295(1) through 295(11).

Specifically, in reference to portions of oral instructions that might be criticized because tending to be invasive of the province of the jury, we find the following stated in 98 C.J.S., Trial, Sec. 438, the text being amply supported by citations:

> "A charge which, taken as a whole, correctly submits the issues to the jury will not be held objectionable because certain instructions taken in their severalty, may be subject to criticism on the ground they invade the province of the jury, * * * ."

To this same effect, see *Abercrombie* v. *Martin and Hoyt Co.,* 227 Ala. 510, 150 So. 497; *Choctaw Coal and Mining Co.* v. *Dodd,* 201 Ala. 622, 79 So. 54.

We have carefully read the court's entire oral instruction to the jury. It is a fair, accurate, and clear expression of the governing legal principles. In light of the entire charge we consider that the portion of the charge complained of to be inconsequential, and unlikely to have af- [fol. 2235] fected the jury's conclusions. We do not consider it probable that this appellant was injured in any substantial right by this alleged misleading instruction in view of the court's repeated and clear exposition of the principles involved, and the numerous written charges given at defendant's request further correctly instructing the jury in the premises.

The individual appellants, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery have also filed briefs and arguments in their respective appeals. Many of the assignments of error in these individual appeals are governed by our discussion of the principles relating to the appeal of The Times. We therefore will now confine our review in the individual appeals to those assignments that may present questions not already covered.

In their assignment of error No. 41, the individual appellants assert that the lower court erred in its oral instructions as to ratification of the use of their names in the publication of the advertisement. The instructions of the court in this regard run for a half a page or better. The record shows that an exception was attempted in the following language:

> "Lawyer Gray: Your Honor, we except to the Court's charge dealing with ratification as well as the Court's charge in connection with the advertisement being libelous per se in behalf of each of the individual defendants."

[fol. 2236] The above attempted exception was descriptive of the subject matter only, and is too indefinite to invite our review. *Birmingham Ry. Light and Power Co.* v. *Friedman,* 187 Ala. 562, 65 So. 939; *Conway* v. *Robinson,* 216 Ala. 495, 113 So. 531; *Birmingham Ry. Light and Power Co.* v. *Jackson,* 198 Ala. 378, 73 So. 627.

The refusal of a large number of charges applicable only to the individual appellants are also made the bases of numerous assignments of error. We have read all such refused charges, and each and every one is faulty.

Several of the charges instruct the jury that if the jury "find" etc., while others use the term "find from the evidence." These charges were refused without error in that the predicate for the jury's determination in a civil suit is "reasonably satisfied from the evidence." A court cannot be reversed for its refusal of charges which are not expressed in the exact and appropriate terms of the law. *W. P. Brown and Sons Lumber Co.* v. *Rattray,* 238 Ala. 406, 192 So. 851.

Others of the refused charges, not affirmative in nature, are posited on "belief," or "belief from the evidence." A judgment will not be reversed or affirmed because of the refusal, or giving, of "belief" charges. *Sovereign Camp, W.O.W.* v. *Sirten,* 234 Ala. 421, 175 So. 539; *Pan American Petroleum Co.* v. *Byars,* 228 Ala. 372, 153 So. 616; *Casino Restaurant* v. *McWhorter,* 35 Ala. App. 332, 46 So. 2d 582.

[fol. 2237] Specification of error number 6 asserts error in the court's action in refusing to sustain the individual

defendant's objection to the way one of the plaintiff's counsel pronounced the word "negro." When this objection was interposed, the court instructed plaintiff's counsel to "read it just like it is," and counsel replied, "I have been pronouncing it that way all my life." The court then instructed counsel to proceed. No further objections were interposed, nor exceptions reserved.

We consider this assignment mere quibbling, and certainly nothing is presented for our review in the state of the record.

Counsel have also argued assignments to the effect that error infects this record because, (1) the courtroom was segregated during the trial below, and (2) the trial judge was not duly and legally elected because of alleged deprivation of voting rights to negroes.

Neither of the above matters were presented in the trial below, and cannot now be presented for review.

Counsel further argues that the appellants were deprived of a fair trial in that the trial judge was, by virtue of Local Act No. 118, 1939 Local Acts of Alabama, p. 66, a member of the jury commission of Montgomery County. This act is constitutional. *Reeves* v. *State,* 260 Ala. 66, 68 So. 2d 14.

Without intimating that any merit attaches to this contention, it is sufficient to point out that this point was not raised in the trial below, and must be considered as having [fol. 2238] been waived. *De Moville* v. *Merchants & Farmers Bank of Greene County,* 237 Ala. 347, 186 So. 704.

Assignments 42, 121, 122, assert error in the court's refusal to hear the individual appellant's motions for new trials, and reference in brief is made to pages 2058-2105 of the record in this connection.

These pages of the record merely show that the individual appellants filed and presented to the court their respective motions for a new trial on 2 December 1960, and the same were continued until 16 December 1960. On 16 December 1960, the respective motions were continued to 14 January 1961. No further orders in reference to the motions of the individual appellants appear in the record, and no judgment on any of the motions of the individual appellants appears in the record.

The motions of the individual appellants therefore become discontinued after 14 January 1961.

There being no judgments on the motion for a new trial of the individual appellants, and they having become discontinued, those assignments by the individual appellants attempting to raise questions as to the weight of the evidence, and the excessiveness of the damages are ineffective and present nothing for review. Such matters can be presented only by a motion for a new trial. See 2 Ala. Dig., Appeal and Error, Key Nos. 294(1) and 295, for innumerable authorities.

Other matters are argued in the briefs of the individual appellants. We conclude they are without merit and do not invite discussion, though we observe that some of the matters attempted to be brought forward are insufficiently presented to warrant review.

[fol. 2239] Evidence on the merits

The plaintiff first introduced the depositorial testimony of Harding Bancroft, secretary of The Times.

Mr. Bancroft thus testified that one John Murray brought the original of the advertisement to The Times where it was delivered to Gershon Aronson, an employee of The Times. A Thermo-fax copy of the advertisement was turned over to Vincent Redding, manager of the advertising department, and Redding approved it for insertion in The Times. The actual insertion was done pursuant to an advertising insertion order issued by the Union Advertising Service of New York City.

Redding determined that the advertisement was endorsed by a large number of people whose reputation for truth he considered good.

Numerous news stories from its correspondents, published in The Times, relating to certain events which formed the basis of the advertisement and which had been published from time to time in The Times were identified. These news stories were later introduced in evidence as exhibits.

Also introduced through this witness was a letter from A. Philip Randolph certifying that the four individual defendants had all given permission to use their names in furthering the work of the "Committee to Defend Martin Luther King and the Struggle for Freedom in the South."

Mr. Bancroft further testified that The Times received a letter from the plaintiff dated 7 April 1960, demanding a retraction of the advertisement. They replied by letter [fol. 2240] dated 15 April 1960, in which they asked Mr. Sullivan what statements in the advertisement reflected on him.

After the receipt of the letter from the plaintiff, The Times had McKee, its "string" correspondent in Montgomery, and Sitton, its staff correspondent in Atlanta, investigate the truthfulness of the allegations in the advertisement. Their lengthy telegraphic reports, introduced in evidence showed that the Alabama College officials had informed them that the statement that the dining room at the College had been padlocked to starve the students into submission was absolutely false; that all but 28 of the 1900 students had re-registered and meal service was furnished all students on the campus and was available even to those who had not registered, upon payment for the meals; that the Montgomery police entered the campus upon request of the College officials, and then only after a mob of rowdy students had threatened the negro college custodian, and after a college policeman had fired his pistol in the air several times in an effort to control the mob. The city policy had merely tried to see that the orders of the Alabama College officials were not violated.

Sitton's report contained the following pertinent statements:

> " * * * Paragraph 3 of the advertisement, which begins, 'In Montgomery, Alabama, after students sang' and so forth, appears to be virtually without any foundation. The students sang the National Anthem. Never at any time did policy 'ring' the campus although [fol. 2241] on three occasions they were deployed near the campus in large numbers. Probably a majority of the student body was at one time or another involved in the protest but not the 'entire student body.' I have been unable to find anyone who has heard that the campus dining room was padlocked. * * * In reference to the 6th paragraph, beginning: 'Again and

> again the Southern violators' and so forth, Dr. King's home was bombed during the bus boycott some four years ago. His wife and child were there but were not (repeat not) injured in any way. King says that the only assault against his person took place when he was arrested some four years ago for loitering outside a courtroom. The arresting officer twisted King's arm behind the minister's back in taking him to be booked. * * * .' "

These reports further show that King had been arrested only twice by the Montgomery police. Once for speeding on which charge he was convicted and paid a $10.00 fine, and once for "loitering" on which charge he was convicted and fined $14.00, this fine being paid by the then police commissioner whom the plaintiff succeeded in office.

Mr. Bancroft further testified that upon receipt of a letter from John Patterson, Governor of Alabama, The Times retracted the advertisement as to Patterson, although in The Times' judgment no statement in the advertisement referred to John Patterson either personally or as Governor of Alabama. However, The Times felt that [fol. 2242] since Patterson held the high office of Governor of Alabama and believed that he had been libeled, they should apologize.

Grover C. Hall, Jr., Arnold D. Blackwell, William H. MacDonald, Harry W. Kaminsky, H. M. Price, Sr., William M. Parker, Jr., and Horace W. White, all residents of the city of Montgomery, as well as the plaintiff, testified over the defendant's objections that upon reading the advertisement they associated it with the plaintiff, who was Police Commissioner.

E. Y. Lacy, Lieutenant of detectives for the city of Montgomery, testified that he had investigated the bombings of King's home in 1955. This was before the plaintiff assumed office as Commissioner of Police. One bomb failed to explode, and was dismantled by Lacy. In attempting to apprehend the bombers, "The Police Department did extensive research work with overtime and extra personnel and we did everything that we knew including inviting and working with other departments throughout the country."

O. M. Strickland, a police officer of the city of Montgomery, testified that he had arrested King on the loitering charge after King had attempted to force his way into an already overcrowded courtroom, Strickland having been instructed not to admit any additional persons to the courtroom unless they had been subpoenaed as a witness. At no time did he nor anyone else assault King in any manner, and King was permitted to make his own bond and was released.

[fol. 2243] In his own behalf the plaintiff, Sullivan, testified that he first read the advertisement in the Mayor's office in Montgomery. He testified that he took office as a Commissioner of the City of Montgomery in October 1959, and had occupied that position since. Mr. Sullivan testified that upon reading the advertisement he associated it with himself, and in response to a question on cross-examination, stated that he felt that he had been greatly injured by it.

Mr. Sullivan gave further testimony as to the falsity of the assertions contained in the advertisement.

For the defense, Gershon Aronson, testified that the advertisement was brought to him by John Murray and he only scanned it hurriedly before the advertisement was sent to the Advertising Acceptability Department of The New York Times. As to whether the word "they" as used in the paragraph of the advertisement charging that "Southern violators" had bombed King's home, assaulted his person, arrested him seven times, etc., referred to the same people as "they" in the paragraph wherein it was alleged that the Alabama College students were padlocked out of their dining room in an attempt to starve them into submission and that the campus was ringed with police, armed with shotguns, tear gas, etc., Aronson first stated, "Well, it may have referred to the same people. It is rather difficult to tell" and a short while later Aronson stated, "Well, I think now it probably refers to the same people."

The Times was paid in the vicinity of $4,800 for publishing the advertisement.

[fol. 2244] D. Vincent Redding, assistant to the manager of the Advertising Acceptability Department of The Times, testified that he examined the advertisement and approved

it, seeing nothing in it to cause him to believe it was false, and further he placed reliance upon the endorsers "whose reputations I had no reason to question." On cross-examination Mr. Redding testified he had not checked with any of the endorsers as to their familiarity with the events in Montgomery to determine the accuracy of their statements, nor could he say whether he had read any news accounts concerning such events which had been published in The Times. The following is an excerpt from Mr. Redding's cross-examination:

> "Q. Now, Mr. Redding, wouldn't it be a fair statement to say that you really didn't check this ad at all for accuracy?
>
> "A. That's a fair statement, yes."

Mr. Harding Bancroft, Secretary of The Times, whose testimony taken by deposition had been introduced by the plaintiff, testified in the trial below as a witness for the defendants. His testimony is substantially in accord with that given in his deposition and we see no purpose in an additional delineation of it.

As a witness for the defense, John Murray testified that he was a writer living in New York City. He was a volunteer worker for the "Committee to Defend Martin Luther King," etc., and as such was called upon, together with two other writers, to draft the advertisement in question. [fol. 2245] These three were given material by Bayard Rustin, the Executive Director of the Committee, as a basis for composing the advertisement. Murray stated that Rustin is a professional organizer, he guessed along the line of raising funds. Murray knew that Rustin had been affiliated with the War Resisters League, among others.

After the first proof of the advertisement was ready, Rustin called him to his office and stated he was dissatisfied with it as it did not have the kind of appeal it should have if it was to get the response in funds the Committee needed.

Rustin then stated they could add the names of the individual defendants since by virtue of their membership in the Southern Christian Leadership Conference, which

supported the work of the Committee, he felt they need not consult them.

The individual defendants' names were then placed on the advertisement under the legend "We in the South who are struggling daily for dignity and freedom warmly endorse this appeal."

Murray further testified that he and Rustin rewrote the advertisement "to get money" and "to project the ad in the most appealing form from the material we were getting."

As to the accuracy of the advertisement, Murray testified:

> "Well, that did not enter the—it did not enter into consideration at all except we took it for granted that it was accurate—we took it for granted that it was accurate—they were accurate—and if they hadn't been [fol. 2246] —I mean we would have stopped to question it—I mean we would have stopped to question it. We had every reason to believe it."

The individual defendants all testified to the effect that they had not authorized The New York Times, Philip Randolph, the "Committee to Defend Martin Luther King," etc., nor any other person to place their names on the advertisement, and in fact did not see the contents of the advertisement until receipt of the letter from the plaintiff.

They all testified that after receiving the letter demanding a retraction of the advertisement they had not replied thereto, nor had they contacted any person or group concerning the advertisement or its retraction.

Amount of Damages

Under assignment of error No. 81, The Times argues those grounds of its motion for a new trial asserting that the damages awarded the plaintiff are excessive, and the result of bias, passion, and prejudice.

In *Johnson Publishing Co.* v. *Davis,* supra, Justice Stakely in a rather definitive discussion of a court's approach to the question of the amount of damages awarded in libel actions made the following observations:

" * * * The punishment by way of damages is intended not alone to punish the wrongdoer, but as a deterrent to others similarly minded. Liberty National Life Insurance Co. v. Weldon, supra; Advertiser Co. v. Jones, supra; Webb v. Gray, 181 Ala. 408, 62 So. 194. [fol. 2247] "Where words are libelous per se and as heretofore stated we think the published words in the present case were libelous per se, the right to damages results as a consequence, because there is a tendency of such libel to injure the person libeled in his reputation, profession, trade or business, and proof of such pecuniary injury is not required, such injury being implied. Advertiser Co. v. Jones, supra; Webb v. Gray, supra; Brown v. Publishers: George Knapp & Co., 213 Mo. 655, 112 S.W. 474; Maytag Co. v. Meadows Mfg. Co., 7 Cir., 45 F. 2d 299.

"Because damages are presumed from the circulation of a publication which is libelous per se, it is not necessary that there be any correlation between the actual and punitive damages. Advertiser Co. v. Jones, supra; Webb v. Gray, supra; Whitcomb v. Hearst Corp., 329 Mass. 193, 107 N.E. 2d 295.

"The extent of the circulation of the libel is a proper matter for consideration by the jury in assessing plaintiff's damages. Foerster v. Ridder, Sup., 57 N.Y.S. 2d 668; Whitcomb v. Hearst Corp., supra.

* * * * * * *

"In Webb v. Gray, supra [181 Ala. 408, 62 So. 196], this court made it clear that a different rule for dam- [fol. 2248] ages is applicable in libel than in malicious prosecution cases and other ordinary tort cases. In this case the court stated in effect that in libel cases actual damages are presumed if the statement is libelous per se and accordingly no actual damages need be proved.

* * * * * * *

"In Advertiser Co. v. Jones, supra, this Court considered in a libel case the claim that the damages were excessive and stated: 'While the damages are large in this case we cannot say that they were excessive. There was evidence from which the jury might infer malice,

and upon which they might award punitive damages. This being true, neither the law nor the evidence furnishes us any standard by which we can ascertain certainly that they were excessive. The trial court heard all of this evidence, saw the witnesses, observed their expression and demeanor, and hence was in a better position to judge of the extent of punishment which the evidence warranted than we are, who must form our conclusions upon the mere narrative of the transcript. This court, in treating of excessive verdicts in cases in which punitive damages could be awarded, through Justice Haralson spoke and quoted as follows: "There is no legal measure of damages in cases of this character." '

[fol. 2249]

* * * * * * *

"The Supreme Court of Missouri considered the question in Brown v. Publishers: George Knapp & Co., 213 Mo. 655, 112 S.W. 474, 485, and said: 'The action for libel is one to recover damages for injury to man's reputation and good name. It is not necessary, in order to recover general damages for words which are actionable per se, that the plaintiff should have suffered any actual or constructive pecuniary loss. In such action, the plaintiff is entitled to recover as general damages for the injury to his feelings which the libel of the defendant has caused and the mental anguish or suffering which he had endured as a consequence thereof. *So many considerations enter into the awarding of damages by a jury in a libel case that the courts approach the question of the excessiveness of a verdict in such case with great reluctance.* The question of damages for a tort especially in a case of libel or slander is peculiarly within the province of the jury, and unless the damages are so unconscionable as to impress the court with its injustice, and thereby to induce the court to believe the jury were actuated by prejudice, partiality, or corruption, it rarely interferes with the verdict.' " (Emphasis supplied.)

[fol. 2250] In the present case the evidence shows that the advertisement in question was first written by a professional organizer of drives, and rewritten, or "revved up" to make it more "appealing." The Times in its own files had articles already published which would have demonstrated the falsity of the allegations in the advertisement. Upon demand by the Governor of Alabama, The Times published a retraction of the advertisement insofar as the Governor of Alabama was concerned. Upon receipt of the letter from the plaintiff demanding a retraction of the allegations in the advertisement, The Times had investigations made by a staff correspondent, and by its "string" correspondent. Both made a report demonstrating the falsity of the allegations. Even in the face of these reports, The Times adamantly refused to right the wrong it knew it had done the plaintiff. In the trial below none of the defendants questioned the falsity of the allegations in the advertisement.

On the other hand, during his testimony it was the contention of the Secretary of The Times that the advertisement was "substantially correct." In the face of this cavalier ignoring of the falsity of the advertisement, the jury could not have but been impressed with the bad faith of The Times, and its maliciousness inferable therefrom.

While in the *Johnson Publishing Co.* case, supra, the damages were reduced by way of requiring a remittitur, such reduction was on the basis that there was some element of truth in part of the alleged libelous statement. No such reason to mitigate the damages is present in this case. [fol. 2251] It is common knowledge that as of today the dollar is worth only 50 cents or less of its former value.

The Times retracted the advertisement as to Governor Patterson, but ignored this plaintiff's demand for retraction. The matter contained in the advertisement was equally false as to both parties.

The Times would not justify its nonretraction as to this plaintiff by fallaciously asserting that the advertisement was substantially true, and further, that the advertisement as presented to The Times bore the names of endorsers whose reputation for truth it considered good.

The irresponsibility of these endorsers in attaching their names to this false and malicious advertisement cannot shield The Times from its irresponsibility in printing the advertisement and scattering it to the four winds.

All in all we do not feel justified in mitigating the damages awarded by the jury, and approved by the trial judge below, by its judgment on the motion for a new trial, with the favorable presumption which attends the correctness of the verdict of the jury where the trial judge refuses to grant a new trial. *Housing Authority of City of Decatur* v. *Decatur Land Co.,* 258 Ala. 607, 64 So. 2d 594.

[fol. 2252] In our considerations we have examined the case of *New York Times Company* v. *Conner,* (SCCA) 291 F. 2d 492 (1961), wherein the Circuit Court of Appeals for the Fifth Circuit, relying exclusively upon *Age Herald Publishing Co.* v. *Huddleston,* 207 Ala. 40, 92 So. 193, held that no cause of action for libel arose in Alabama where the alleged libel appeared in a newspaper primarily published in New York.

This case overlooks, or ignores, the decision of this court in *Johnson Publishing Co.* v. *Davis,* 271 Ala. 474, 124 So. 2d 441, wherein this court rejected the argument that the whole process of writing, editing, printing, transportation and distribution of a magazine should be regarded as one libel, and the locus of such libel was the place of primary publication. This court further, with crystal clarity, held that *Age Herald Publishing Co.* v. *Huddleston,* supra, concerned a venue statute, and that venue statutes do not apply to foreign corporations not qualified to do business in Alabama.

The statement of Alabama law in the *Conner* case, supra, is erroneous in light of our enunciation of what is the law of Alabama as set forth in the *Johnson Publishing Company* case, supra. This erroneous premise, as we interpret the *Conner* case, renders the opinion faulty, and of no persuasive authority in our present consideration.

> "The laws of the several states, except where the Constitution of treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts [fol. 2253] of the United States, in cases where they apply." Sec. 1652, Title 28, U.S.C.A., 62 Stat. 944.

It is our conclusion that the judgment below is due to be affirmed, and it is so ordered.

Affirmed.

Livingston, C. J., and Simpson and Merrill, JJ., concur.

[fol. 2254]

IN THE SUPREME COURT OF THE STATE OF ALABAMA

The Court Met in Special Session Pursuant to Adjournment

Present: All the Justices

MONTGOMERY CIRCUIT COURT

3rd Div. 961

THE NEW YORK TIMES COMPANY, a Corporation,

vs.

L. B. SULLIVAN.

JUDGMENT—August 30, 1962

Come the parties by attorneys and the record and matters therein assigned for errors being argued and submitted on motions and merits and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court there is no error.

It is Therefore Considered, Ordered and Adjudged that the judgment of the Circuit Court be in all things affirmed.

It is Further Considered, Ordered and Adjudged that the appellant, The New York Times Company, a Corporation, and St. Paul Fire and Marine Insurance Company, a Corporation, surety on the supersedeas bond, pay the amount of the judgment of the Circuit Court and ten per centum (10%) damages thereon and interest and the costs of appeal of this Court and of the Circuit Court.

And it appearing that said parties have waived their right of exemptions under the laws of Alabama, it was ordered that execution issue accordingly.

And it was further Ordered and Adjudged that the other appellants, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery, be also taxed with the costs of appeal of this Court and of the Circuit Court, for which costs let execution issue accordingly.

[fol. 2255] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF ALABAMA

Third Division No. 961

THE NEW YORK TIMES COMPANY, A Corporation, Appellant,

vs.

L. B. SULLIVAN, Appellee.

Appeal From Montgomery Circuit Court.

MOTION FOR STAY OF EXECUTION—Filed November 13, 1962

To the Honorable Supreme Court of the State of Alabama:

Comes now the Appellant, The New York Times Company, a Corporation, and shows unto the Court as follows:

1. This cause came to this Court on appeal from the Circuit Court of Montgomery County from a judgment of that said court against this Appellant and others in the amount of Five Hundred Thousand Dollars ($500,000.00).

2. At the time of taking the appeal from the judgment of the Circuit Court of Montgomery County this Appellant filed in said Circuit Court a supersedeas bond in the amount of One Million Five Hundred Dollars ($1,000,-500.00), which bond was executed by this Appellant as

principal and St. Paul Fire and Marine Insurance Company as surety.

3. On, to-wit, the 30th day of August, 1962, this Honorable Court rendered a judgment affirming the judgment of the Circuit Court of Montgomery County and rendering judgment against this Appellant and the surety on its bond in the amount of Five Hundred Thousand Dollars ($500,000.00), plus interest and ten percent (10%) penalty.

4. This Appellant will petition the Supreme Court of the United States for review of the judgment of this Honorable Court on writ of certiorari and desires a stay of execution of the judgment of this Honorable Court and of the Circuit Court of Montgomery County pending the final determination of the review by the Supreme Court of the United States.

5. Appellant has filed with the Clerk of this Honorable Court a bond executed by Appellant as principal and St. Paul Fire and Marine Insurance Company as surety whereby Appellant and surety are held and firmly bound unto [fol. 2256] L. B. Sullivan in the sum of Five Hundred Thousand Dollars ($500,000.00) plus ten percent (10%) penalty thereon with interest, the cost of appeal in the Supreme Court of Alabama and the Circuit Court of Montgomery County, and all damages and costs which L. B. Sullivan may sustain or has sustained by reason of the stay hereby petitioned for pending the final determination of a petition for certiorari to be filed in the United States Supreme Court by Appellant.

Wherefore Premises Considered this Appellant prays that this Honorable Court stay the execution of the judgment of this Honorable Court and the judgment of the Circuit Court of Montgomery County until such time as the Supreme Court of the United States denies this Appellant's petition for writ of certiorari or rules adversely to this Appellant upon review of the judgment of this Honorable Court on writ of certiorari, and until that said Court renders a decision on any application for rehearing that may be filed as a result of its said action in connection with the petition for writ of certiorari or until the time allowed by

law for filing a petition for writ of certiorari has expired and no petition for writ of certiorari has been filed.

Beddow, Embry & Beddow, By Roderick M. MacLeod, Jr., Attorneys for Appellant, The New York Times Company, a corporation.

STAY OF EXECUTION—November 13, 1962

Appellant, The New York Times Company, a corporation, having filed in this Court a petition for a stay of the execution of the judgment rendered by this Court on August 30, 1962 in order that it may seek a review of the judgment of this Court in the Supreme Court of the United States by a petition for writ of certiorari and the same having been duly examined and understood by this Court and this Court being of the opinion that the petition is due to be granted, it is hereby

Ordered and Adjudged that the judgment in this case be and the same is hereby stayed until such time as the Supreme Court of the United States denies this Appellant's petition for writ of certiorari or rules adversely to this Appellant upon review of the judgment of this Court on writ of certiorari and until that said court renders a decision on any application for rehearing that may be filed as a result of its said action in connection with the petition for writ of certiorari or until the time allowed by law for filing a petition for writ of certiorari has expired and no petition for writ of certiorari has been filed or until further orders of this Court.

[fol. 2257] Done and Ordered this 13 day of November, 1962.

J. Ed Livingston, C.J., Simpson, Merrill, Harwood, JJ., concur.

[fol. 2258]

IN THE SUPREME COURT OF THE STATE OF ALABAMA

(Letterhead of St. Paul Fire and Marine Insurance Company, Saint Paul, Minnesota)

[Stamp—Filed—Nov 13 1962—Supreme Court of Alabama —J. Render Thomas—Clerk]

WRIT OF CERTIORARI

UNITED STATES SUPREME COURT

KNOW ALL MEN BY THESE PRESENTS, that we, THE NEW YORK TIMES COMPANY, a corporation of the State of New York, as Principal, and ST. PAUL FIRE AND MARINE INSURANCE COMPANY, a corporation organized under the laws of the State of Minnesota, having its principal office in the City of St. Paul, State of Minnesota, and having an office and usual place of business in the Jackson Building, Birmingham 3, Alabama, as Surety, are held and firmly bound unto L. B. SULLIVAN in the sum of FIVE HUNDRED THOUSAND AND No/100 ($500,000.00) DOLLARS plus ten per cent damages thereon with interest, the costs of appeal in the Supreme Court of Alabama and the Circuit Court for Montgomery County, and all damages and costs which L. B. SULLIVAN may sustain or has sustained by reason of the stay agreed to and/or granted herein pending the final determination of a petition for certiorari to be filed by THE NEW YORK TIMES COMPANY, for the payment of which well and truly to be made, we bind ourselves and each of us, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents, and as part of this undertaking we hereby waive all our rights under the Constitution and laws of the State of Alabama, to have any of our property, real or personal, exempt from levy and sale in satisfaction hereof.

SEALED WITH OUR SEALS AND DATED this 24th day of September, 1962.

WHEREAS, the Supreme Court of Alabama on August 30th, 1962 having affirmed a judgment of the Circuit Court in Montgomery County and having rendered judgment on August 30th, 1962 against the said Principal and Surety in the amount of FIVE HUNDRED THOUSAND AND No/100 ($500,000.00) DOLLARS, plus ten per cent penalty, plus interest and costs; and

WHEREAS, THE NEW YORK TIMES COMPANY, feeling aggrieved and injured by the said judgment of the Supreme Court of Alabama, is about to commence a proceeding in the Supreme Court of the United States of America for a Writ of Certiorari to review the determination of the Supreme Court of Alabama.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said THE NEW YORK TIMES COMPANY shall prosecute the said Writ to effect and satisfy any final judgment rendered against the said THE NEW YORK TIMES COMPANY, in this action, as the United States Supreme Court may render in the case, then the said obligation to be null and void, otherwise to remain in full force and effect.

THE NEW YORK TIMES COMPANY

By /s/ HARDING F. BANCROFT

[Seal]

ST. PAUL FIRE AND MARINE INSURANCE COMPANY

By /s/ V. J. BORELLI
V. J. BORELLI, Attorney-in-Fact

[Seal]

Bond #431FH 6582

COUNTERSIGNED AT BIRMINGHAM, ALA.

By /s/ J. B. CHAPMAN
Resident Agent

11074a 2M Rev. 6/61

[Handwritten notation—Filed and approved this the 13 day of November 1962 J. Render Thomas Court Clerk of the Supreme Court of Ala.]

[fol. 2258a]

CORPORATION ACKNOWLEDGMENT

THE ST. PAUL
INSURANCE COMPANIES

(Emblem)

Serving you around the world . . . around the clock

State of New York
County of New York, *ss*:

On this 31st day of October, 1962, before me personally came Harding F. Bancroft to me known, who being by me duly sworn, did depose and say; that he resided in New York, N. Y. that he is the Secretary of The New York Times Company the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

/s/ ANNA M. JOHNSON, Notary Public
My commission expires .....

Anna M. Johnson
Notary Public, State of N. Y.
No. 24-7091910
Qualified in Kings Co.
Cert. filed in New York Co.
Comm. expires March 30, 1964

[fol. 2258b]
State of New York
County of New York, *ss.*:

On this 24th day of September A.D., 1962, before me, the subscriber, a notary public duly commissioned and sworn, personally came V. J. Borelli who, being by me duly sworn, on his oath saith: that he is an Attorney-in-Fact of the

St. Paul Fire and Marine Insurance Company; that he resides in Brooklyn, New York, that he knows the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by him the said Attorney-in-Fact, by order of the Board of Directors of said Company; and that deponent signed the foregoing instrument by like authority as the voluntary act and deed of said Company; that said Company has duly complied with all the requirements of Chapter No. 134 of the Laws of the State of New Jersey of the year 1902 and the amendments thereof and supplements thereto; that the good, available assets of the Company exceed its liabilities, as such liabilities are ascertained in the manner provided in said Chapter; that the St. Paul Fire and Marine Insurance Company is duly incorporated under the laws of the State of Minnesota, and is authorized by the laws of that State and under its charter to become surety on bonds and obligations such as are mentioned in said Chapter; that it has on deposit with the Treasurer of the State of Minnesota good securities worth at par and at market value at least Two Hundred Fifty Thousand Dollars ($250,000.00) held as security for all holders of its obligations, and has a fully paid up, safely invested and unimpaired capital of Twenty Million Dollars ($20,000,000.00); that said Company has appointed the Commissioner of Banking and Insurance of New Jersey and his successors in office as its true and lawful Attorney in the State of New Jersey upon whom process of law can be served, and has filed in the office of the Commissioner of Banking and Insurance a written instrument, duly signed and sealed, certifying such appointment.

/s/ George B. Sloane, Notary Public.

George B. Sloane
Notary Public, State of New York
No. 24-9043670—Kings County
Cert. filed in New York County
Term Expires March 30, 1964

[fol. 2258c]

THE ST. PAUL
INSURANCE COMPANIES

(Emblem)

Serving you around the world . . . around the clock

385 Washington St., St. Paul 2, Minn.

Financial Statement June 30, 1962
St. Paul Fire & Marine Insurance Company

ASSETS

Bonds		186,415,535.69
Stocks		162,745,114.32
Real Estate		11,694,484.74
Cash and Bank Deposits		7,208,679.49
Agents' Balances		28,772,665.74
Due from Reinsurance Cos. and Notes		2,398,455.59
Equity in Assets of Associations		4,729,641.52
Due from St. Paul Mercury Insurance Company		2,224,054.55
Accrued Interest		2,354,270.74
Other Assets		1,711,579.71
		410,254,482.09

LIABILITIES

Reserve for Unearned Premiums		111,616,162.89
Reserve for Unadjusted Losses		86,164,877.44
Reserve for Loss Adjustment Expenses		12,329,811.58
Reserve for Taxes and Expenses		4,425,187.77
Dividends Declared and Unpaid		1,490,262.84
Statutory Reserve Adjustments		5,814,345.09
Funds Held Under Reinsurance Treaties		3,589,132.44
Construction Loan		7,559,375.00
Other Liabilities		1,050,696.83
Special Reserve Fund		1,000,000.00
Capital Stock	25,870,231.25	
Voluntary Reserve	30,000,000.00	
Surplus	119,344,398.96	175,214,630.21
		410,254,482.09

Surplus to Policyholders $175,214,630.21

Securities carried at $7,715,202.00 in the foregoing statement are deposited as required by law.

State of Minnesota,
County of Ramsey, *ss*

W. E. King, Vice President of the St. Paul Fire and Marine Insurance Company, being duly sworn, deposes and says that he is the above described officer of said Company; that said Company is a corporation duly organized, existing and engaging in business as a surety company under and by virtue of the laws of the State of Minnesota, and has duly complied with all the requirements of the laws of said State applicable to said Company and is duly qualified to act as Surety under such laws; that the above is a true statement of the Assets and Liabilities of said Company on the 30th day of June, 1962.

/s/ W. E. KING
W. E. King, Vice President

Subscribed and sworn to before me
this 7th day of August 1962

/s/ GEO. P. LEAF
Geo. P. Leaf

Notary Public, Ramsey County, Minnesota.
My Commission expires September 13, 1967.

[fol. 2258d]
State of New York,
County of New York, *ss.*:

On the 24th day of September in the year 1962, before me personally came V. J. Borelli, to me known, who, being by me duly sworn, did depose and say that he resides in Brooklyn, N. Y.; that he is the Attorney-in-Fact of the ST. PAUL FIRE AND MARINE INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his

name thereto by like order; and the affiant did further depose and say that the Superintendent of Insurance of the State of New York, has, pursuant to Section 327 of the Insurance Law of the State of New York, issued to ST. PAUL FIRE AND MARINE INSURANCE COMPANY his certificate of qualification, evidencing the qualification of said Company and its sufficiency under any law of the State of New York as surety and guarantor, and the propriety of accepting and approving it as such; and that such certificate has not been revoked.

/s/ George B. Sloane
Notary Public

George B. Sloane
Notary Public, State of New York
No. 24-9043670—Kings County
Cert. filed in New York County
Term Expires March 30, 1964

[fol. 2258e]
Class 1 (A Capital Stock Company)

CERTIFIED COPY OF POWER OF ATTORNEY

Original on File at Home Office of Company.
See Certification.

FIDELITY AND SURETY
DEPARTMENT

ST. PAUL
FIRE and MARINE
Insurance Company
HOME OFFICE: ST. PAUL, MINNESOTA

Know All Men By These Presents: That the St. Paul Fire and Marine Insurance Company, a corporation organized and existing under the laws of the State of Minnesota, and having its principal office in the City of Saint Paul, Minnesota, does hereby constitute and appoint A. G. Pod-

lesney, Stuart H. Richardson, W. C. Richardson, Gladys V. Stauder, Florence M. Boosman, Donald H. Rodimer, W. Robert Haslam, T. H. Caley, Alan J. Thompson and V. J. Borelli, individually of New York, New York its true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be binding upon the said St. Paul Fire and Marine Insurance Company, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal office.

This Power of Attorney is executed, and may be certified to and may be revoked, pursuant to and by authority of Article V,—Section 8, of the By-Laws adopted by the Board of Directors of the St. Paul Fire and Marine Insurance Company at a meeting called and held on the 17th day of January, 1952, of which the following is a true transcript of said Section 8:

"The President or any Vice President, Resident Vice President, Secretary or Resident Secretary, shall have the power and authority

(1) To appoint Attorneys-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and

(2) To appoint Special Attorneys-in-fact, who are hereby authorized to certify to copies of any power-of-attorney issued in pursuance of this section and/or any of the By-Laws of the Company, and

(3) To remove, at any time, any such Attorney-in-fact or Special Attorney-in-fact and revoke the authority given him."

In Testimony Whereof, the St. Paul Fire and Marine Insurance Company has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, this 17th day of August A.D. 1962

ST. PAUL FIRE AND MARINE INSURANCE COMPANY

/s/ W. E. KING
Vice President.

(Corporate Seal)

State of Minnesota,
County of Ramsey, *ss.*

On this 17th day of August 1962, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said that he is the therein described and authorized officer of the St. Paul Fire and Marine Insurance Company; that the seal affixed to said instrument is the Corporate Seal of said Company; that the said Corporate Seal and his signature were duly affixed by order of the Board of Directors of said Company.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal, at the City of Saint Paul, Minnesota, the day and year first above written.

/s/ C. L. JAEGER
Notary Public, Ramsey County, Minn.
My Commission Expires June 2, 1967.

(Notarial Seal)

CERTIFICATION

I, the undersigned, a Special Attorney-in-fact of the St. Paul Fire and Marine Insurance Company, duly appointed pursuant to and by authority of the By-Laws of said Company, do hereby certify that I have compared the foregoing copy of the Power of Attorney* and affidavit, and the copy of the Section of the By-Laws of said Company as set forth in said Power of Attorney, with the Originals On File In The Home Office Of Said Company, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

In Testimony Whereof, I have hereunto set my hand this 24th day of September 1962.

/s/ R. A. Petricka
R. A. Petricka
Special Attorney-in-fact

* Unlimited as to character and amount.

[fol. 2259] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 2260]

SUPREME COURT OF THE UNITED STATES

No. 606, October Term, 1962

THE NEW YORK TIMES COMPANY, Petitioner,

vs.

L. B. SULLIVAN

ORDER ALLOWING CERTIORARI—January 7, 1963

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 2261]

SUPREME COURT OF THE UNITED STATES

No. 609, October Term, 1962

RALPH D. ABERNATHY, et al., Petitioners,

vs.

L. B. SULLIVAN

ORDER ALLOWING CERTIORARI—January 7, 1963

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted, and the case is set for argument immediately following No. 606.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA.

AT LAW.

Case No. 27416

L. B. SULLIVAN, Plaintiff,

vs.

THE NEW YORK TIMES COMPANY,
A Corporation, et als., Defendants.

EXHIBITS

Don McKee
Montgomery Advertiser
Montgomery, Ala.

Name _____

Address _____

Town _____

APR 1960

State _____

MAN 06373 DEPT 53 DIV 11

TAX SS AMT

Correspondents	9P	50 00
Suburban		
Brooklyn and Queens		
Sports		
Expenses — Corres.	98	
Expenses — Suburban		
Expenses — B & Q		
Expenses — Sports		
Total		50 00

$50 AF

Audited _____

Checked _____

Plaintiff's Exhibit 1

564

[fol. 564]

PLAINTIFF'S EXHIBIT 1

1195

McKee - Montgomery
Allowance $25.00 for help give
Salisbury on his swing thru South
for authorization see memo
4/18/60

Plaintiff's Exhibit 1

McKee - Montgomery
Allowance $25.00
for help given to Salisbury
on his swing thru South
for authorization see memo
4/18/60

McKee - Montgomery
Allowance $10.00
Alabama forming race-riot
posses
for authorization see memo
4/10/60 Plaintiff's Exhibit 1

McKee - Montgomery
Allowance $10.00
Alabama forming race-riot
posses
for authorization see memo
4/10/60

Allowance
25.00 *
10.00 *
35.00 *

Plaintiff's Exhibit 1

1196
[fol. 565]

John Chadwick
Room 505-Massey Bldg.
South Magazine
Birmingham, Ala.

Name _____

Address _____

Town _____

APR 1960

State _____

MAIL 2246 DEPT. 53 DIV. 11

MEMO TAX 98 AMT. _____

Correspondents	98	1	00	00	00	00
Suburban						
Brooklyn and Queens						
Sports						
Expenses	Corres. 96				—	
	Suburban					
	B & Q					
	Sports					
	Total	1	00	00	00	00

$100

Audited _____

Checked _____

Plaintiff's Exhibit 2.

[fol. 566]

PLAINTIFF'S EXHIBIT 2

Chadwick
allowance 10.00
Stadium Survey

see memo 5/6

Plaintiff's Exhibit 2/

Chadwick - Birmingham
allowance $25.00.
for help given to Salisbury
on his survey thru South
for authorization see memo 4/18

Plaintiff's Exhibit 2

*
7.00 +
8.85 +
words — 15.85 *
allow — 35.00
50.85

Plaintiff's Exhibit 2

567

[fol. 568]
IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT NO. 3

THE NEW YORK TIMES

National News Desk

RULES FOR CORRESPONDENTS

This is what we want:

1. Stories of more than local interest in fields such as inter-faith cooperation, public welfare, scientific advances, conservation, public power, education, etc. These stories may concern progress in these fields, retrogression or disputes.

2. Local stories which may contain a lesson for others—such as traffic advances, municipal taxation, major civic improvements, elections for city and state-wide offices, building of major bridges and tunnels, public housing, etc. These stories, too, may concern progress, or lack of it or disputes.

3. Anything not covered by the above instructions that you think readers of The New York Times would be interested in. If you have any doubts about what we want, query us.

Sunday stories:

1. We have a special interest in regional stories that cannot be fully explained in a brief daily story. These pieces may run as long as 500 to 700 words.

2. No such story should be sent in unless ordered. You may query by airmail or telephone as soon as you can—on Monday, if possible.

3. Stories so ordered must reach us not later than Wednesday, unless other arrangements are approved.

This is how we want stories:

1. Query us by telephone at Lackawanna 4-1000, National News Desk, on all spot stories as early as possible in the day, starting at 10:30 A. M. We will try to give you an immediate answer on what we want.

[fol. 569] 2. On time stories, we would like to be queried by airmail and we will answer as soon as we can. These are the type of stories that can be sent to us by airmail.

3. On spot stories, after receiving an order, file by telephone to our Recording Room, Lackawanna 4-4554, after 11 A. M. and before 6 P. M. On a really important story, of course, file to the Recording Room when you can.

4. All queries and files should be addressed to "National News Editor," New York Times, not to any individual by name.

Payment:

1. We pay for all stories ordered, whether or not used, if we ask for a picture, we will pay for that.

2. Our rates are a cent a word.

3. We require correspondents to file a bill at the end of each month to reach us not later than the 3rd. This will be checked against our clippings and checks will go out on or about the 10th of each month. We do not want a string; just a listing of the stories ordered with the wordage.

4. If you have any unusual expenses or if you do not think the wordage ordered covers your work on the story, a statement should be sent in together with your bill.

5. Bills and expense statements should be sent to me.

If you have any questions, either about payment or story ideas in general, please do not hesitate to write to me.

Sincerely,

/s/ Harold Faber
Harold Faber
Day National News Editor