

[GRIFFITH WILLIAMS AND MELISSAS, JJ.]

(April 8 and 14, 1949)

SIR PANAYIOTIS L. CACOYANNIS, *Appellant*,*v.*

VASSOS PAPAPOPOULOS AND OTHERS,

*Respondents.**(Civil Appeal No. 3850.)*1949
April 14SIR PANAYIOTIS L.
CACOYANNIS
v.
VASSOS PAPAPOPOU-
LOS AND
OTHERS.*Libel—Damages—Assessment—Estimate of damage—Appreciation of evidence—Principle on which Court of Appeal acts.*

The appellant sued the respondents claiming £6,000 damages for libel. The alleged defamatory statements were contained in an election address delivered by the second respondent and published in a newspaper. The District Court, consisting of the President and a District Judge, found that the publication complained of was a libel outside the protection of conditional privilege afforded by section 21 of the Civil Wrongs Law, 1932, but the President awarded plaintiff £100 damages and the District Judge £1,000, and judgment was necessarily entered for the smaller sum. Against this judgment the plaintiff appealed contending that the award of £100 was unreasonably low and grossly inadequate in view of the gravity of the libel. It was argued for the respondents that appellant went to Court to vindicate his character, that the trial Court decided in his favour with strong words of condemnation of the respondents' conduct, and that the President rightly awarded £100 which was a reasonable sum in these circumstances.

Held: (i) that where a judge expressed in his spoken judgment his opinion of the libel, and the conduct of the person uttering it, he was not thereby disentitled from awarding heavy damages.

(ii) Where the circumstances of the particular libel warranted it damages might to some extent be exemplary and deterrent, and the assessment or estimate of the trial Court would not be lightly interfered with by an appellate Court.

(iii) The Court of Appeal would not interfere with the decision of the trial Court on the amount of damages unless it were satisfied either that the trial Court acted on some wrong principle of law or that the amount awarded was so extremely large or so very small as to make it an entirely erroneous estimate of damage.

(iv) The President's assessment of the damages at £100 was so low in relation to the seriousness of the libel, having regard to the standing and position of the parties and the aggravating circumstances of the case, as to be an entirely erroneous estimate of damage.

Amount of damages awarded by the District Court increased to £1,000.

1949
April 14
SIR PANAYIOTIS L. CACOYANNIS
v.
VASSOS PAPA-DOPOULOS AND OTHERS.

Appeal by a successful plaintiff asking that the damages (£100) awarded him by the full District Court of Limassol should be increased (Action No. 210/46).

M. M. Houry and *A. S. Myrianthis* for the appellant.

J. Clerides and *J. Potamitis* for the respondents.

The facts of the case and arguments of counsel appear sufficiently in the judgment of the Court which was delivered by:

GRIFFITH WILLIAMS, J.: The appellant sued the respondents in the District Court of Limassol claiming £6,000 damages for libel contained in an extraordinary issue of the newspaper "Grammata" of the 9th May, 1946. In this issue the respondents published an election address which was delivered by respondent 2 on the 5th May, 1946. The electioneering campaign related to the then impending municipal elections in Limassol. The appellant was a prominent supporter of the group of candidates nominated by the "Progressive Party", and the respondents 1 and 2 along with five others were the opposing group of candidates supported by the AKEL party. Respondent 1 was the proprietor, respondent 2 the editor, and respondent 3 the printer of this newspaper. They all pleaded qualified or conditional privilege, but respondent 3 at the beginning of the trial offered his apologies and desisted from the prosecution of his defence.

After a protracted trial the District Court consisting of Dupré, President of the District Court, and Glykys, District Judge, found that the publication complained of was a libel outside the protection of conditional privilege afforded by section 21 of the Civil Wrongs Law, 1932. But the two members of the Court differed in the amount of damages: the President awarded plaintiff £100 and the District Judge £1,000. Necessarily judgment was entered for plaintiff for the smaller sum, and from this judgment plaintiff appeals on the ground that the damages awarded are unreasonably too low and grossly inadequate.

The appeal is of an unusual type on account of (1) the fact that it is brought by a successful plaintiff asking that the damages awarded him by the lower Court should be increased—and (2) the fact that the two judges who sat in the lower Court arrived at very different figures in their estimate of the damages to be awarded. Indeed the fact that one considered £100 sufficient damages whereas the other assessed them at £1,000 shows clearly that the views of the two judges regarding the seriousness of the case were greatly at variance if not actually in conflict—and this though the learned President adopted his brother judge's findings and apparently also his comments on the facts.

The findings of fact are set out in the judgment of the District Judge. From them it appears that the libel was published widely in Cyprus and abroad ; that it "savagely assailed the personal character and honour of the plaintiff " and " imputed to him the most sordid motives for every step that he had taken whilst executing his official functions." Defendant 2 raked into plaintiff's political actions of the last quarter of a century ; and from a spirit of political antagonism, personal feelings of spite and ill-will, and not from a desire to protect and promote the public interest he gave such a distorted and ugly picture of plaintiff's political activities as suited most his purpose, which was, according to the tenor of the whole article, to stigmatise the plaintiff for his policies. Judge Glykys came to the conclusion that it was a very grave libel on appellant, and taking into consideration the conduct of the defence by persisting to the last in maintaining the suitability and the appropriateness of the epithets applied to the appellant, arrived at his estimate of the seriousness of the case.

The President of the District Court in his judgment, after adopting the statement of facts and law by Judge Glykys, passed to a consideration of the quantum of damages ; and it clearly appears that he was influenced in his assessment of the damages by a series of assumptions. He said : " I am taking into consideration that the libel complained of was made during a political address, and, as in all political matters, persons hearing it or reading it will believe so much of it as they wish to believe, according to their political views. If a person of good social position used similar libellous expressions about another person, when there was no reason for him to do so, the estimate of damages must necessarily be higher since the libel is more likely to be believed by the whole community ; but in a political address the supporters of the plaintiff are quite likely to become more sympathetic to the plaintiff."

These assumptions, in our opinion, are not warranted by the evidence in the case, and moreover, political addresses are made to convince and convert electors to the speakers' views. Had the respondent contented himself with his oral address and allowed his ephemeral words to drift away upon the empty air no doubt they would have been quickly forgotten or discounted as mere political froth and propaganda ; perhaps they would never have even reached the appellant's ears. But the respondent seems to have been so pleased with his flight of fancy, and considered his description of the appellant as a traitor and a dirty Greek so felicitous that he decided to rob his remarks of their

1949
April 14

SIR PANAYIOTIS L.
CACOYANNIS
v.
VASSOS PADOPOULOS AND
OTHERS.

1949
April 14

SIR PANAYIOTIS L.
CACOYANNIS

v.
VASSOS PAPA-
DOPOULOS AND
OTHERS.

ephemeral character by having them printed ; so that, not only should they constitute an enduring stain on the good name of the appellant, but should reach a far larger public.

The implication to be drawn from the judgment of the learned President seems to be that any person however influential, honourable and respected he may be, if he does his duty by taking any part in the politics or government of the Colony, is liable to be subjected to scurrilous personal attacks on his character and reputation without any hope of adequate protection or redress. This, in our view, is quite incorrect ; and the fact that in cases of libel damages awarded do not necessarily have any connection with the actual damage sustained but may be punitive or exemplary supports this view. Indeed, were the Courts unable to afford protection from defamation to those taking part in public affairs it would become impossible to obtain the services of honourable, disinterested and influential citizens in the government of their country. To strengthen his assumptions the learned President remarks : " Great licence must be allowed in a political speech, and anyone who dabbles in politics does not expect compliments from his opponents." This may be so and for the promotion of the public good the law permits, we apprehend, strong criticism of the public conduct of public men, even by the use of harsh speech or writing, but the latitude of criticism allowed by the law should not be turned into licence to defame and vilify ; and where the limits of good faith are overstepped, and criticism degenerates into calumny of the lowest description, as, in the finding of the Court, occurred in this case, redress for the wrong committed should be commensurate.

The learned President in his judgment gave a further explanation in mitigation of the abusive terms applied to the appellant. He said : " The libel does not attack plaintiff in his home or personal life or in his professional life as an advocate. The word ' traitor ' does not imply that he has committed any criminal act. He is a traitor to a political cause. ' Self-seeking ' means in his political life and not in his private life or professional life as an advocate. ' Dirty Greek ' are very strong words ; again they refer to his political views and not to his person."

For this view the President relied, he says, on the article itself and on a statement by defendant 2 in his evidence quoted in the judgment, viz. : " I have never made a personal attack against you and I will say that I will never attack you personally. I attacked you as the leader of your party. Personally I have no grudge against you."

This opinion of the respondent 2 on the effect of his article was of course irrelevant, this being an issue for the Court to determine. But in this connexion appellant's counsel remarked with considerable force: "Could an unfaithful, dishonest, selfish man in public life, cease to carry those qualities with him into his professional or private life? It would not be possible to isolate these vices only to one department of his activity."

We consider that the learned President arrived at an erroneous appreciation of the evidence in his assessment of the damages. We cannot subscribe to the view that political misconduct is any less serious or less likely to excite contempt than misconduct in other activities; nor is it less likely to create personal stigma.

On the legal aspect of the estimate of damages the President appears to have been completely governed by the decision in *Rook v. Fairrie* (L.J. K.B. 1941, p. 319). In that case the Court of Appeal in England held that whereas a jury can express condemnation of a defendant only by awarding heavy damages, a judge is not so limited, and is entitled to assess the damages at a lower figure than that at which a jury might assess them. This decision was explained in *Bull v. Vasquez and another* (1947 A.E.R., Vol. 1, p. 336) by Lord Greene, M.R., who presided in both appeals. In the latter, speaking of his judgment in the former, he says: "That judgment cannot be read as suggesting that where a judge expresses in his spoken judgment his opinion of the libel and the conduct of the person uttering it, he is thereby in some way disentitled from awarding heavy damages. The position is that the whole matter is at large and the Judge is entitled, though not bound, to take into account what he has been able to say in his spoken judgment."

It was argued by the respondents' counsel before us that plaintiff went to Court to vindicate his character and the Court decided in his favour with strong words of condemnation of the defendants, and of the conduct of their case; that on the other hand there was nothing in the judgment of the trial Court referring to the manner the case of the plaintiff was conducted; and that the learned President rightly awarded £100, which is a reasonable sum under the circumstances. In so far as the findings of fact and the estimate of damages necessitated, there is castigation of defendant's conduct in the District Judge's judgment, but we find none, except by reference to the District Judge's remarks, in the President's; on the contrary he gave a number of explanations which mitigated, he thought, the rigour of the libel. It is true that

1949
April 14
SIR PANAYIOTIS L. CACOYANNIS
v.
VASSOS PAPA-
DOPOU-
LOS AND
OTHERS.

1949
 April 14
 SIR PANAYIOTIS L.
 CACOYANNIS
 v.
 VASSOS PAPA-
 DOPOULOS AND
 OTHERS.

plaintiff subjected defendant 2 to no less rigorous and searching cross-examination than he himself endured in the witness box but one would naturally expect plaintiff to make every effort to discover defendant 2's motives, spirit and intention in libelling him, and on both sides the cross-examination ranged far beyond the necessities of the case, but the blame for this, in our opinion, rests more with the conduct of the defence than with the conduct of plaintiff's case, and the outcome of the trial makes this manifest.

The nature of the injury occasioned by this wrong is such that it is not susceptible of money valuation with any exactness, and plaintiff's counsel at the opening of his case made it clear that the claim was not for special but for general damages. Where the circumstances of the particular libel warrant it damages may to some extent be exemplary and deterrent, and the assessment or estimate of the trial Court will not be lightly interfered with by an appellate Court.

In the present case hardly any of the aggravating elements referred to in the authorities are missing, as can be seen from the brief statement of the facts found by the trial Court and already set out herein. We consider the learned President's assessment of the damages at £100 so low in relation to the seriousness of the libel, having regard to the standing and position of the parties and the aggravating circumstances of the case, as to be little more than nominal, and to be a completely erroneous estimate of the damages to which the appellant is entitled. Counsel for the appellant has argued that we should not consider ourselves bound by the higher figure of £1,000 awarded by the District Judge and that a sum of £3,000 would bear a better relationship to the seriousness of the case. The Court of Appeal however does not interfere in questions of damages unless it thinks the award has been made on some wrong principle. In the present case we are convinced that an assessment of so low a sum as £100 involves a wrong principle as we have endeavoured to explain. On the other hand we do not feel justified in going above the sum of £1,000 in awarding damages, as we think that the District Judge was of the opinion that this was a case for substantial damages, and that in his estimate of £1,000 he was in effect giving appellant substantial damages. The estimate arrived at by the learned District Judge is in our view on the moderate side, but we do not feel justified in awarding a larger amount.

The appeal will be allowed. The amount of damages awarded is increased to £1,000, with costs to appellant for two advocates.