SUPPLEMENT No. 4

TO

THE CYPRUS GAZETTE No. 2724 OF 12TH MAY, 1939.

CYPRUS LAW REPORTS

PUBLISHED BY AUTHORITY OF THE SUPREME COURT.

[CREAN, C.J., AND GRIFFITH WILLIAMS, J.]

1939
April 14.

IOANNIS KYRIAKIDES, OF LIMASSOL,
Appellant (Plaintiff),

v.

SIR HERBERT RICHMOND PALMER, THE PRESENT GOVERNOR,
Respondent (Defendant).
(Civil Appeal No. 3626).

IOANNIS KYRIAKIDES *v.* SIR HERBERT RICHMOND PALMER.

JURISDICTION OF THE COURTS TO INQUIRE INTO THE ACTS DONE BY A MEMBER OF THE EXECUTIVE AND DECIDE AS TO THEM—INHERENT POWER OF A COURT TO DISMISS AN ACTION AS FRIVOLOUS AND VEXATIOUS—OFFICIAL DOCUMENT—ACTS OF A GOVERNOR AND PROTECTION AFFORDED TO THEM BY THE POWERS DELEGATED TO THE GOVERNOR BY HIS COMMISSION, LETTERS PATENT AND ROYAL INSTRUCTIONS —SECTION 20 (1) (*a*) OF THE CIVIL WRONGS LAW, 1932—LIBEL.

An action was brought, in the District Court of Limassol, by the appellant against the respondent claiming damages for libel on account of certain words written by him in a preface to a publication called "The Activities of the Hassanpoulia" which, the appellant alleged, was defamatory of him. The Attorney-General made an application, on behalf of the respondent, to the Court to exercise its inherent powers and dismiss the action as frivolous and vexatious. The Court granted this application and the appellant appealed from this order of the Court.

HELD *by the Chief Justice :—*

(1) *That the District Court had jurisdiction to hear the case and decide if the publication of the document was absolutely privileged ;*

(2) *That all the facts of the case were before the District Court on the hearing of the application of the Attorney-General to dismiss the action as frivolous and vexatious, and that in an application when the inherent powers of the Court are called on all the facts of the case can be gone into and affidavits of the facts are admissible on the hearing of such application ;*

(3) *That the writing of the preface pertained to the office of Governor, and was therefore official and absolutely privileged under the Cyprus Civil Wrongs Statutes ;*

1939
April 14.

IOANNIS KYRIAKIDES
v.
SIR HERBERT RICHMOND PALMER.

(4) *That if the preface cannot be considered as an official document, the writing and publication of it are really acts of state policy done under the authority of the Crown and within the powers entrusted to the Governor in his Commission, Letters Patent and Royal Instructions ;*

(5) *That the words complained of are not libellous and not of a nature as to expose the appellant to general hatred and contempt and to impute to him a bad character.*

HELD *by Mr. Justice Griffith Williams :—*

(1) *That the publication was not an "official document" within the meaning of section* 20 (1) (*a*) *of the Civil Wrongs Law,* 1932.

(2) *That the words complained of were not capable of a defamatory meaning or the meaning assigned to them by the appellant ;*

(3) *That when a Court is of opinion that an action cannot succeed if allowed to go to trial, it can dismiss it under its inherent jurisdiction as frivolous and vexatious.*

Clerides with *Vassiliades* and *Zenon* for appellant.

Attorney-General with *Crown Counsel* for the respondent.

The facts of the case and arguments of counsel appear sufficiently in the judgments.

Judgment : CREAN, C.J.: This is an appeal from an order of the District Court of Limassol dismissing the action, wherein Ioannis Kyriakides, retired advocate of Limassol, is plaintiff and Sir Herbert Richmond Palmer, the present Governor of Cyprus, is defendant. The writ states that the action is brought against the defendant in his personal capacity and claims damages for libel of, and concerning the plaintiff. The libel is said to be contained in a preface to a pamphlet entitled " The Criminal Activities of the Hassanpoulia " printed at the Government Printing Office of the Colony of Cyprus.

It is also set out in the writ that this document was published or caused to be published by the defendant all over Cyprus and in Limassol in the year 1938, and is now actually on sale to the public, with the object of propagating in Cyprus and abroad a system of administration for the Colony of Cyprus, in the propagation of which it is alleged that the defendant is interested.

The facts leading up to this action are shortly as follows: A band of robbers and murderers flourished about 40 years ago in the hills of the Paphos District. Many people were murdered by them, and many people were robbed by them. They abducted anyone they were asked to abduct, and generally they did just as they pleased, and apparently with very little fear of the police or the Government.

They had friends in nearly every village, and so if the police were anywhere in their vicinity they were usually informed by these friends, hidden by them in their houses, or in some other way assisted to escape from the notice of the police. But whether this was done by the people

in the villages through fear of these bandits, or from affection or admiration of them, is not disclosed in the short history written about their methods of murder and robbery.

Their doings were evidently remembered by old people in this Island, and so the Deputy Commissioner of Police ordeerd Mr. Kareklas, the Inspector of Police of Paphos District, to write a short history of these people. He did so, and from that history it appears that this band of murderers called the "Hassanpoulia" had very little difficulty in evading the police and for a long time were the scourge of the countryside. The efforts of the police in trying to arrest them appear to have been quite futile, but it is not stated, if that was due to the inefficiency of the police or to the support and connivance of the large number of friends these criminals had in each village.

They were ultimately rounded up while sleeping in the house of a black girl at Kithasi by 20 troopers. One of them was killed by a shot from the police and the other two were arrested, subsequently tried for murder, and executed. This happened in 1895, forty-four years ago.

The libel complained of is as follows:—

"PREFACE.

"Mr. Kareklas' account of the crimes of the Hassanpoulia is a "document which to the Administration of Cyprus is of great interest, "and not merely to the Police Force.

"From a wider angle of vision, it provides an extremely instructive "commentary on administrative policy, and its application to Cyprus "under conditions which only in recent years have begun materially to "change.

"The impunity with which hardened criminals of this type preyed "upon the country for years, and terrorized its inhabitants, the vast "majority of whom were and are, as Mr. Kareklas says, 'quiet' people, "was in the first place because there existed virtually no responsible "corporate life, organization and local leadership in the villages "themselves.

"The British Administration was at that time dependant on members "of a Legislative Council, who, to maintain their own position and place, "had perforce to work through and with those elements in the country "districts which, as Mr. Kareklas points out, were the only strong "elements, albeit these latter maintained their strength by 'gangster' "methods. The police, therefore, instead of being able to act with and

1939
April 14.

IOANNIS KYRIAKIDES
v.
SIR HERBERT RICHMOND PALMER.

" in supplementation of a corporate village administrative organization " which, on the whole, would be in favour of Law and Order, had to " rely for co-operation mainly on the shifting exigencies of individual " self-interest, inclination, or hatred.

" In the second place, though the mountain regions of Cyprus are " relatively not far from the plains, they are very precipitous and " rugged, so that, in the absence of a complete system of road fit for " vehicular traffic, rapid executive action was difficult—and even to-day " is slow in parts.

" The perusal of these pages, describing as they do phases of district-" life which were more or less common 40 years ago, and which, though " on a smaller and less notorious scale, were far from uncommon up to " 1931, should be of considerable value not only to Government Officials " in Cyprus, but to a wider circle who are now interested in Cyprus.

(*Sgd.*) H. R. PALMER,
Governor.

27th July, 1937."

In the writ it is said that the defendant meant by these words that the plaintiff—who at the material time and for many subsequent years was a member of the Legislative Council—was a person of such low political morality and generally of such bad character as to work through, and with notorious murderers and gangsters for personal advantages, namely, in order to maintain his position and place as a member of the Legislative Council.

The plaintiff further states in the writ that the defendant also meant by these words, that while the British Administration of the Island was dependent at that time on the members of the Legislative Council, the plaintiff as such member failed the administrative in the performance of the duty or trust placed on him by the said public office, thus imputing to plaintiff a bad character and misconduct or failure in his public office or duty and exposing him to general hatred and contempt.

An injunction is applied for by the plaintiff to restrain the defendant from further publishing and circulating the said libellous preface and costs of the action are claimed as well.

The writ of summons was issued by the plaintiff on the 12th May, 1938, and on the 19th of May an application was filed by the Attorney-General for the defendant, before a defence was filed, asking the Court to exercise its inherent powers and to strike out or dismiss the action on the several grounds which are therein stated.

The first ground is, that the matter complained of was published by the Governor, the defendant, in an official document entitled " The " Criminal Activities of the Hassanpoulia " the copyright whereof was reserved to the Crown. This document being a Government publication printed at the Cyprus Government Printing Office, and bearing thereon the Royal Arms, and having printed thereon the number of the relevant Government file, the publication of such matter was absolutely privileged and no action could lie in respect thereof, or of any part of it.

A further ground given under this heading is, that on the face of the document, or if it is read in conjunction with the document " The " Criminal Activities of the Hassanpoulia " the matter complained of, is incapable of any defamatory meaning, or of the meaning assigned to it by the plaintiff in his writ of summons.

And, that the action is frivolous and vexatious and an abuse of the process of the Court. It is frivolous and vexatious, it is said, because (*a*) the matter complained of was published by the Governor in an official document and therefore absolutely privileged; (*b*) the document was published by the defendant in his official capacity, as Governor of the Colony and not in his personal capacity; (*c*) the matter complained of is incapable of any defamatory meaning; and (*d*) the plaintiff has no reasonable or probable cause of action.

This application by the Attorney-General was made in pursuance of the provision of Order XX of the Rules of Court, 1927, as amended by the Rules of Court published in the *Cyprus Gazette* of the 23rd March, 1934, and in pursuance of the practice and procedure observed by the Courts in England in virtue of section 51 of the Courts of Justice Law, 1935. In support of the application affidavits by J. H. Ashmore, R. J. P. Thorne Thorne, and F. S. Passingham are filed, and they say how this preface which is complained of, was published.

The application ends up by stating that it is made, subject to, and without prejudice to the right of the defendant to claim, that the Court has no power or jurisdiction to entertain or to try the action.

The affidavits filed in support of this application shew how the document in question came to be published and printed. Mr. Ashmore, the Deputy Commissioner of Police, says that on the 22nd February, 1937, he requested Mr. Kareklas, the Superintendent of Police at Paphos, to furnish him with a précis history of the exploits of the three known murderers called Hassanpoulia for purposes of record in his office; that on the 15th July, 1937, he received from Mr. Kareklas a report on the life and criminal activities of Hassanpoulia and that this

1939
April 14.

IOANNIS KYRIAKIDES
v.
SIR HERBERT RICHMOND PALMER.

report was subsequently published as an official document under the title " The Criminal Activities of the Hassanpoulia " in the form in which it is now on sale as a Government publication.

It is said by Mr. Thorne Thorne in his affidavit that he is an Administrative Officer, performing the duties of Chief Assistant Secretary in the office of the Colonial Secretary, and that, to his knowledge, the document entitled " The Criminal Activities of the Hassanpoulia " by Mr. Ch. Kareklas, M.B.E., printed at the Cyprus Government Printing Office in the year 1938, is an official document published by His Excellency the Governor in his official capacity, and in the ordinary course of administration and government and that the preface in the above official document was written by and under the hand of Sir Herbert Richmond Palmer in his official capacity as Governor of the Colony as therein shown.

And by Mr. F. S. Passingham, M.B.E., Superintendent of the Cyprus Government Printing Office, it is stated that the above document " The Criminal Activities of the Hassanpoulia " was printed at the Cyprus Government Printing Office in the year 1938 in accordance with instructions from the office of the Colonial Secretary in the usual course of his duties regarding the printing of official documents. He says it is an official document published by His Excellency the Governor in his official capacity and that the preface contained in that official document was written by and under the hand of Sir Herbert Richmond Palmer in his official capacity as Governor of the Colony of Cyprus as shewn therein.

The application of the Attorney-General was heard by the District Court on the 31st May, 1938, and from the record it appears that the matter was argued at great length by the Attorney-General and by counsel for the plaintiff and after taking time for consideration the District Court gave judgment on the 2nd June, and held that the alleged libel was contained in a document which was an official document, and therefore absolutely privileged by section 20 (1) (*a*) of the Civil Wrongs Law, 1932, and so the action was dismissed.

I think it may be taken from the wording of the application to the District Court to exercise its inherent powers and dismiss the action at that stage, *i.e.*, before a defence was filed, that it is founded on three grounds. These grounds put shortly are: (1) The words complained of as libellous were contained in an official document and therefore absolutely privileged; (2) The words were incapable of any defamatory meaning or of the meaning assigned to them by the plaintiff; and (3) The Court has no power or jurisdiction to try the action.

The grounds of appeal from the order of the District Court are, substantially: (1) The Court was wrong in deciding that it could hear evidence or decide as to disputed facts which could form part of a possible defence, before such facts were actually pleaded. And in an application to dismiss an action such as this the Court was wrong in deciding that the preface containing the alleged libel was an official document within the meaning of section 20 (1) (*a*) of the Civil Wrongs Law, 1932. And as the Writ of Summons disclosed a reasonable cause of action the plaintiff was entitled to go to trial.

The District Court founded its decision on one ground only and that was, that the document in which the alleged libel was contained was an official document and therefore absolutely privileged under the above section 20. The other two reasons why the application to dismiss should be granted were not considered, as appears by the judgment. But there does not appear to be any reason why they should have been; for, once it was held that the document was an official document, that was a complete defence to the action. And if it had gone on to trial the Court must have concluded that the plaintiff was bound to fail and therefore dismissed the action at that stage.

In an application to the Court to dismiss an action by virtue of its inherent powers before a defence has been filed, and before trial, the authorities seem to think that the Court should consider and be satisfied that the action has reached the stage at which it can assume that it knows the whole of the facts. This is the test according to the decision of Lord Fletcher Moulton in *Goodson v. Grierson*, 1908 Appeal Cases, p. 765.

In the application to dismiss filed by the defendant, it is said, in the third ground given, that the application is made subject to and without prejudice to the right of the defendant to claim that the Court has no power or jurisdiction to try the action. If that contention were right, it would be useless to consider the other points mentioned in the application, so it may be better, to dispose of it first. I am not quite sure what is meant by this ground which I have just given; but, if it is claimed that the act of writing this preface by the defendant as Governor of the Colony was an act of state: Section 5 of the Civil Wrongs Law, 1932, deals with an act of state and is in the following words:—

" No action shall be brought under the provisions of this Law in " respect of any act of state, that is to say, any act causing injury or " damage to any person who is not at the time of that act a subject " of His Majesty and which act is done by a representative of His " Majesty's civil or military authority and is either previously " sanctioned or subsequently ratified by His Majesty."

1939
April 14.

IOANNIS KYRIAKIDES v. SIR HERBERT RICHMOND PALMER.

But what is said by Lord Atkin in the case of *Eshugbayi Eleko v. The officer Administering the Government of Nigeria*, 1931 Appeal Cases, is instructive and helpful in coming to a conclusion what an act of state really is, and if the act of writing this preface complained of, can be considered as such. Lord Atkin says: "This phrase is capable of "being misunderstood. As applied to an act of the sovereign power "directed against another sovereign power or the subjects of another "sovereign power not owing temporary allegiance, in pursuance of "sovereign rights of waging war or maintaining peace on the high "seas or abroad, it may give rise to no legal remedy. But as applied "to acts of the executive directed to subjects within the territorial "jurisdiction it has no special meaning, and can give no immunity from "the jurisdiction of the Court to inquire into the legality of the act."

The act of publishing the preface complained of in this case would appear to come under the second category of acts which may be called acts of state, as it could reasonably be said to be an act of the executive directed to subjects within the territorial jurisdiction and, therefore, no immunity from the jurisdiction of the Court to inquire into the legality of the Act is given. In my opinion that is a complete answer to the point which questions the jurisdiction of the Court. And if any other ground were wanting, I think, it can be found in the same judgment where Lord Atkin says: "The Governor acting under the "Ordinance acts solely under executive powers and in no sense as a "Court. As the executive he can only act in pursuance of the powers "given to him by law. In accordance with British jurisprudence no "member of the executive can interfere with the liberty or property "of a British subject, except on the condition that he can support the "legality of his action before a Court of Jurisdiction. And it is the "tradition of British Justice that judges should not shrink from deciding "such issues in the face of the executive."

It seems then, that if a subject thinks his liberty or property is interfered with by a member of the executive, the Court has jurisdiction to inquire into the acts and decide as to them. Following that principle, the District Court would appear to have had jurisdiction to hear the plaintiff's case, and decide if the publication of the document was absolutely privileged, and if its publication could be considered as one or other of the acts of state referred to in the case of *Eshugbayi v. The Officer Administering the Government of Nigeria ;* therefore, the third ground given in the application to dismiss the action is disposed of.

There remain the two further questions: whether the document is an official one, and whether the words are capable of a defamatory meaning.

And following the rule laid down by Lord Fletcher Moulton one has to examine and see if all the facts of the case were before the District Court on the hearing of the application of the Attorney-General to dismiss the action as frivolous and vexatious. So far as I can see all the facts were before the Court at this stage. As to whether the words are capable of a defamatory meaning the words were before the Court, and it probably considered that they spoke for themselves and that it was impossible that there could be any further evidence of any facts concerning them. In the same way the document containing the alleged libel was before the Court and it had the opportunity of noting that it was signed by the defendant as Governor, that it bore the Royal Arms, was printed at the Cyprus Government Printing Office, and that there was the number of the minute file in the Colonial Secretary's Office dealing with such publication. And it may be, that the Court saw from it, that its form was the same as the Blue Book which is published annually in pursuance of Clause XXI of the Instructions under the Royal Sign Manual and Signet to the Governor and Commander-in-Chief of Cyprus, and concluded that no other facts as to the case could be put before it.

In addition to these two documents the three affidavits I have already referred to were before the Court. And an affidavit of the plaintiff himself in which he denies (1) that the preface complained of is an official document; (2) that the pamphlet entitled "The Criminal "Activities of the Hassanpoulia" is an official document; (3) that the defendant had any power or authority under his office to write or publish prefaces to any books or pamphlets intended for publication to the world at large; (4) that the defendant wrote or published the preface by virtue of or in the exercise of any power or authority under his office; (5) that the defendant had any power or authority in the ordinary course of administration to write or publish prefaces to any books or pamphlets intended for publication to the world at large; (6) that the defendant did write or publish the preface in the ordinary course of administration and government; (7) that the pamphlet was published by order of the Governor in Council.

The affidavits of the Deputy Commissioner of Police, the Acting Assistant Chief Secretary and the Superintendent of the Government Printing Office all assert positively that the document sued on is an official document. But, of course, statements like these are by no means conclusive. Nor is the assertion in the plaintiff's affidavit in reply, that the defendant had no power or authority in the ordinary course of administration of the Colony to publish the preface, conclusive

1939
April 14.

IOANNIS KYRIAKIDES
v.
SIR HERBERT RICHMOND PALMER.

that the writing of it was outside the powers granted to him by his Commission, the Letters Patent and Royal Instructions.

From the judgment of the District Court it is clear that it was realized that an application to dismiss an action under its inherent powers must be exercised with great caution. And the Court was satisfied that evidence could be heard at that stage and all the circumstances of the case considered. After consideration it was held that the preface sued upon was an official document and so absolutely privileged. It is set out in the case of *Bottomley v. Brougham* by Channell, J., that "The real doctrine of what is called 'absolute privilege' is that in the "public interest it is not desirable to inquire whether the words or acts "of certain persons are malicious or not. It is not that there is any "privilege to be malicious, but that, so far as it is a privilege of the "individual—I should call it rather a right of the public—the privilege "is to be exempt from all inquiry as to malice; that he should not be "liable to have his conduct inquired into to see whether it is malicious "or not—the reason being that it is desirable that persons who occupy "certain positions as judges, as advocates, or as litigants should be "perfectly free and independent, and, to secure their independence, "that their acts and words should not be brought before tribunals "for inquiry into them merely on the allegation that they are malicious. "I think there is something more in that distinction than mere words, "and the reason that this peculiar doctrine of 'absolute privilege' "is sometimes complained of, is that it is not thoroughly understood."

It was submitted in the course of the argument by Mr. Clerides on behalf of the appellant, that if it were held to be an official document, then there was no reason why the Governor of a Colony could not publish any defamatory matter he wished in a preface to an official document, and by having the Royal Arms on it, by signing it as Governor and having it printed at the Government Printing Office be immune from any action at law on foot of it. This argument must have been considered by the Court and notwithstanding it, was of opinion that the document was official and absolutely privileged. The Court must have come to the conclusion that the only remedy for the plaintiff in a case like that was by way of petition, memorial or remonstrance. But that conclusion does not appear to me to be in accordance with the law on the subject as laid down in the Privy Council case I have just referred to, which deals with two different types of acts of state, the latter of which, I think, includes such an act as the one for which the defendant is sued herein.

The test applied by the District Court in deciding whether the document sued upon was an official one is not, in my view, the correct one,

for I do not think it is by the trappings of the document one should judge whether it is an official document or not. It does not seem reasonable to me, that the writing of injurious matter in a document can automatically be made an official document and become privileged by putting the Royal Arms on it, and having it printed at the Government Printing Office. It was argued by Mr. Clerides for the appellant on this point that the fact of a document having the Royal Arms on it, being signed by the Governor, and printed at the Government Printing Office with a reference minute number on it, does not convert that document into an official document, and therefore make it absolutely privileged. It is submitted by him that if that were the law, there would be nothing to prevent the most scandalous matter being written in it, damaging a subject and the subject would have no remedy because the document is an official one, and absolutely privileged.

I entirely agree that a document which in no way relates to the Government or to Government policy of the Colony can be converted into an official document by the above methods. But if the document is written by a Governor in the course of his official duties and within the scope of his lawful authority then I think the position is different.

In my opinion the proper test to be applied in regard to this preface is to consider if the writing of it were an act authorized by, and within the limit of the powers granted to the Governor by his Commission, the Letters Patent and Royal Instructions. If the act done were within the powers granted to the Governor then, I think, it should be considered as one of the different kinds of acts of state, and therefore privileged. The Court, of course, must decide what was its nature, and if it were an act coming within the limits of the powers delegated by the Commission, Letters Patent and Royal Instructions. And if it can be considered as anything in the nature of an act of state within the powers granted by the Letters Patent and Instructions then for reasons of public policy it must be protected.

The authority for this proposition of law is the case of *Musgrave v. Pulido.*

It appears to me, in the absence of any ruling as to what an official document actually is, that it is very difficult to say what documents can be considered as such. "Official" is generally taken to mean "pertaining to an office or post". If then the matter in this document on which this action is founded, obviously, and on the face of it pertains to the office or post of administrator of this Colony I think it should be considered as an official document.

1939
April 14.

IOANNIS KYRIAKIDES
v.
SIR HERBERT RICHMOND PALMER.

But, if there is some definition of official document of which I am not aware, and which rules that the document herein could not be considered as an official one, then the act of writing the preface has to be considered, and a decision given as to whether or not the writing of it was within the powers given to the Governor and can be said to be in the nature of an act of state, and if it were written with a view to the peace, order and good government of the Colony.

In support of the argument that the act of writing the preface was within the lawful scope of the defendant the Attorney-General referred to Halsbury *Laws of England*, Vol. II, Clause 304, where it is said that a Governor's authority is derived from his Commission and confined to the powers thereby expressly or impliedly entrusted to him. I see that the authority for this statement is the case of *Musgrave v. Pulido*, 1879, 5 Appeal Cases, 102, and there it was held " The Governor of a " Colony (in ordinary cases) cannot be regarded as a Viceroy; nor can " it be assumed that he possesses general sovereign power. His " authority is derived from his commission, and limited to the powers " thereby expressly or impliedly entrusted to him. Let it be granted " that, for acts of power done by a Governor, under and within the limits " of his commission, he is protected, because in doing them, he is the " servant of the Crown, and is exercising its sovereign authority; " the like protection cannot be extended to acts which are wholly " beyond the authority confided to him. Such acts, though the Gover- " nor may assume to do them as Governor, cannot be considered as " done on behalf of the Crown, nor to be in any proper sense acts of " state. When question of this kind arises it must necessarily be " within the province of Municipal Courts to determine the true charac- " ter of the acts done by a Governor, though it may be that, when it is " established that the particular act in question is really an act of " state policy done under the authority of the Crown, the defence is " complete, and the Courts can take no further cognizance of it. It is " unnecessary, on this demurrer, to consider how far a Governor when " acting within the limits of his authority, but mistakenly, is protected."

In my opinion, what is written by the defendant in this preface clearly pertains to his office of Governor of this Colony. It is apparent to me, that it was written about administrative policy of the Colony and that it advocated the reading of the pamphlet with the view of imparting knowledge to Government Officials in their duties. That being so, I think, it should be admitted that the writing of it pertained to the office of Governor, and was therefore official and absolutely privileged under the Cyprus Civil Wrongs Statute.

But, if the preface cannot be considered an official document then it has to be considered, if the writing of it is an act within the scope of the lawful authority of the Governor. According to the above case of *Musgrave v. Pulido* his authority is derived from his Commission and limited to the powers thereby expressly or impliedly entrusted to him and if the act complained of is within the limits of his Commission then he is protected; because, in doing it, he is the servant of the Crown and is exercising its Sovereign authority.

In this case, if the preface cannot be considered as coming within the definition document, then, in my opinion, the writing of it, and the publication of it are really acts of state policy done under the authority of the Crown and that, I think, is a lawful defence. The powers impliedly entrusted to the Governor in his Commission, Letters Patent and Instructions are such, I think, as would include an act such as this and therefore such act, in my opinion, is protected. It is protected, I would say, because it is undesirable and against public policy that the Governor of a Colony should be put in the position of having to go into the witness box to explain what is meant by a writing which can reasonably be seen to relate to methods and policy of governing the Colony.

It has been submitted by counsel for the appellant that the District Court was wrong in deciding that it could receive evidence at that stage of facts, which were in dispute and which would form part of the substance of a possible defence to the action before such acts were actually pleaded. In support of this submission the case of *Lawrence v. Norreys*, 15 Appeal Cases, 1890, is the one mainly relied on. In the judgment of Lord Herschell His Lordship remarks that "though "Mr. Justice Stirling was disposed to treat the allegations in the "Statement of Claim as fiction, he gave the plaintiff an opportunity "of filing affidavits." These affidavits were examined by Their Lordships on the appeal and consequently I would be inclined to think that this case does not support the contention of Mr. Clerides, that evidence of facts in issue cannot be received when the Court is asked to exercise its inherent powers on an application to dismiss an action because it is vexatious. It seems to me that the authorities strongly indicate, that in an application such as this, where the inherent powers of the Court are called on, all the facts of the case can be gone into and affidavits as to the facts are admissible on the hearing of the application. Further it would appear that there is nothing to prevent the Court from taking into consideration the facts of the case which the District Court did in this case, and after so doing, came to the conclusion that the proceedings were vexatious and that the plaintiff was bound to fail in his action.

1939
April 14.

IOANNIS KYRIAKIDES
v.
SIR HERBERT RICHMOND PALMER.

In considering all the circumstances of the case the District Court must have considered the words which are said to be libellous; and, therefore, the question whether they are capable of a defamatory meaning is one which might be considered as coming within the scope of this appeal though it is not specifically given as a ground therefore.

As to this part of the case, I am inclined to say, that he would be a highly imaginative person who could connect these words with the plaintiff herein: Or, that there was any chance of the plaintiff proving that the words complained of, exposed him to general hatred and contempt, and imputed to him a bad character.

I agree with the decision of the District Court that the proceedings herein are vexatious, and therefore, in my opinion, the appeal should be dismissed with costs.

GRIFFITH WILLIAMS, J.: This is an appeal from an order of the District Court of Limassol dismissing this action under its inherent jurisdiction as frivolous, vexatious and an abuse of the process of the Court. The action was brought by the appellant claiming damages against the respondent for libel on account of certain words written by him in a preface to a publication issuing out of the Government Printing Office called "The Activities of the Hassanpoulia," which, he alleged, were defamatory of him. The Court in making the order appealed from, held that the above-mentioned publication was an official document, and that any words published by the respondent therein were absolutely privileged under section 20 (1) (*a*) of the Civil Wrongs Law, 1932.

The Attorney-General for respondent (defendant in the Court below) brought his application under Order XX of the Rules of Court, 1927, as amended by the Rules of Court published in the *Gazette* of 23rd March, 1934, and in pursuance of the practice and procedure of the Courts in England, which obtains in Cyprus, when no local rule exists, by virtue of section 51 of the Courts of Justice Law, 1935. He asked that the action be struck out or dismissed by the Court either (1) on the ground that it disclosed no reasonable cause of action or that the action was frivolous or vexatious, or else (2) under its inherent jurisdiction on the grounds that the action was frivolous and vexatious and an abuse of the process of the Court.

He contended that the Court either on the ground that no action lay, or of its inherent jurisdiction should dismiss the action for one or any of the following reasons:—

1. That the alleged libel, the subject of the action, was contained in a government publication which was an "official document" and

as such absolutely privileged under section 20 (1) (*a*) of the Civil Wrongs Law, 1932.

2. That the matter complained of was incapable of any defamatory meaning or of the meaning assigned to it by the plaintiff (now appellant) in the particulars set out in the writ of summons.

3. That the matter complained of was not published by the respondent in his personal capacity but as Governor of Cyprus, and that he should not be sued in his personal capacity for an act done in his official capacity.

The submissions of Mr. Clerides for the appellant may be summarized as follows:—

1. That document containing the alleged libel is not an official document and the matters complained of therein are not absolutely privileged under section 20 (1) (*a*) of the Civil Wrongs Law, 1932.

2. That even though the original report by Mr. Kareklas to his chief might be regarded as an official document, which he denied—on the ground that it was not part of Mr. Kareklas' duty to write criminal history—yet on being printed and published it ceased to be an official document.

3. That even though the article by Mr. Kareklas might be an official document, the preface, which he said constituted another document, was not official, since it was not part of the original report.

4. That the words complained of and more particularly those contained in paragraph 4 of the preface to the said document, namely: "The British Administration was at that time dependent "on members of a Legislative Council, who, to maintain their own "position and place, had perforce to work through and with those "elements in the country districts, which, as Mr. Kareklas points "out, were the only strong elements, albeit these latter maintained "their strength by 'gangster' methods" were highly defamatory of the appellant, who at the time to which the preface refers was a member of the Legislative Council of the Colony.

Mr. Clerides contended that the meaning to be given to these words was. "that the plaintiff (appellant) as a member of the "Legislative Council was a person of such low political morality "and generally of such bad character as to work through and with "notorious murderers and gangsters for personal advantages, "namely, in order to maintain his (the plaintiff's) position and "place as member of the said Legislative Council and his position "in society".

1939
April 14.

IOANNIS KYRIAKIDES
v.
SIR HERBERT RICHMOND PALMER.

5. In answer to the submission by the Attorney-General that the respondent should not have been sued in his personal capacity since the publication stated that it was published by him as Governor of the Colony, Mr. Clerides contended that the writing and publication of the preface were not part of the defendant's duty as a Governor, and that it being outside the scope of his authority to write and publish the said preface he was personally liable for anything contained in it, and should be sued personally.

6. Regarding the procedure adopted to get the action dismissed before pleading filed, Mr. Clerides admitted that the application might be made at that stage in the proceedings, but contended that no order should be made on it unless the Court were satisfied that the action could not possibly succeed. He argued that if there was a matter in dispute calling for evidence to be heard at the trial, the ordinary procedure should not be substituted by invoking the inherent jurisdiction, and that there were two questions of fact to be determined. He further contended that the summary stopping of the case does not apply to cases where there is an arguable point; and he maintained that whether or not the publication was an official document was arguable, and whether or not the words complained of were capable of a defamatory meaning was also arguable. For these reasons he submitted that, whatever the ultimate result, the action should be allowed to proceed to trial.

In arguing that the publication in question did not come under the term " official document " within the meaning of section 20 (1) (*a*) of the Civil Wrongs Law, 1932, Mr. Clerides denied in the first place that it was a document at all. Though he admitted that the original report from Mr. Kareklas to Mr. Ashmore was a document, he contended that the printed copies of it containing in addition the commentary or preface, by the defendant were not documents, but pamphlets, and as such did not come under the section in question.

The Attorney-General argued that once a document the fact of printing did not make it cease to be a document; that the preface was part of the document and could not be considered separately; that the original report of Mr. Kareklas was made in compliance with the request of his superior officer and done in accordance with his official duties, and was consequently an official document; and that the preface was an official comment by the respondent in his capacity of Governor; and that the preface together with the report constituted an official document. It was on this point that the District Court decided the case in favour of the respondent-defendant.

It seems impossible to find a satisfactory definition of "official document," but it falls to be decided whether or not the publication in question, particularly the preface, could rightly be included in this term; as, if it is held to be an official document, it is brought within the meaning of section 20 (1) (*a*) of the Civil Wrongs Law, 1932, and is absolutely privileged.

There seems to be no legal definition of the word "document" in the textbooks, so recourse must be had to the more authoritative English Dictionaries. The definition given in the Shorter Oxford Dictionary is divided under four heads as follows:—

1. Teaching, instruction, warning.
2. A lesson, an admonition, a warning.
3. That which serves to show or prove something. Evidence, proof.
4. Something written, inscribed, etc., which furnishes evidence or information upon any subject, as a manuscript, title-deed, coin, etc.

This definition gives "document" a more restricted meaning than in colloquial usage. The meanings given under the first two headings would appear to be obsolete, so only the senses given under heads 3 and 4 need be considered. The word gained acceptance through the legal use of it, as, under head 3, "something which serves to show or "prove something," hence evidence, proof. Even to-day documentary evidence is usually accorded a higher value than oral testimony.

Heading 4 is mainly descriptive of the form a document may take—"something written, inscribed, etc." That is, written on paper, or inscribed on a stone or wood or other material. Then it goes on to say "which furnishes evidence or information on any subject." The meaning of the word "evidence" is clear, but the word "information" is more obscure. May this information be anything which purports to give information, or must it be information of a kind acceptable in a Court of Law? Here the definition of the word "document" in Webster's Dictionary may be of value as a guide. It is as follows:—

1. That which is taught; precept; instruction; dogma. O.B.S.
2. An example or warning; also evidence; proof, as document of guilt. O.B.S.
3. An original or official paper relied upon as the basis, proof or *support of anything else;—in its most extended sense, including* any writing, book or other instrument conveying information; any material substance having on it a representation of the thoughts of men by means of any species of conventional mark or symbol.

1939
April 14.

IOANNIS KYRIAKIDES
v.
SIR HERBERT RICHMOND PALMER.

4. Specif. pl. (*a*) Com. The bill of lading and policy of insurance, and sometimes other papers evidencing or effecting the shipment of goods, their insurance, the transfer of title to the consignee, etc., which are annexed to a documentary bill of exchange. (*b*) Ships papers.

It will be seen that the meanings given under the first 2 headings in the Shorter Oxford Dictionary are substantially the same as under the first two headings in Webster where they are marked "Obsolete." The second part of Head 3 deals with most extended meanings. These extended meanings usually are applicable to colloquial usages and not to the stricter legal usages; and it seems that when the word "document" is qualified by the addition or the word "official" no such extended meanings can be given to it. Heading 4 in Webster gives only certain specific classes of commercial documents, all of which would come under the general definition in part 1 of heading 3. We should therefore perhaps confine the meaning in law to the first part of the definition under head 3 of Webster, which is equivalent to the sense given to it under head 3 of the Shorter Oxford Dictionary. It would seem that head 4 of the Shorter Oxford Dictionary really includes extended meanings such as are mentioned in the second part of Webster's Head 3. This would exclude from the strict legal meaning of the word "document" a paper containing mere information, unless admissible as evidence.

The true criterion of whether or not a paper is a document is its admissibility in a Court of Law as evidence of the facts set out in it, *e.g.*, a return by a Government Department or balance sheet of a public company, are both documents which would be admitted as evidence of the facts stated therein if duly authenticated. It is clear that official document must be a paper of such a nature that the truth of its contents can be relied upon in evidence, since it comes from an official source is prepared in the course of duty, and can be duly authenticated by the proper officer. In its most extended sense "official" means "true." I agree with Mr. Clerides that a report by a person without personal knowledge of the facts and on a subject not within his regular duties cannot be an official document, though made at the request of his superior officer; but I go further and say that not every official report, even though made in accordance with official duty, is an official document, but only such as would be receivable as *prima facie* evidence of the truth of its contents in a Court of Law.

To consider the publication, the subject matter of this action; the author, Mr. Kareklas, himself, does not claim that it is written from his personal knowledge. It is, as he says, written from facts he has learnt

from other people; and, though he believes those facts generally, he admits that in some respects—particularly in regard to sequence of events—they may not be quite correct. Further he cannot say if the persons giving him information were giving true information or whether it was entirely of their personal knowledge or learnt from others. The whole report is, as far as the Court is concerned, hearsay and inadmissible to prove the facts set out therein. Can this be a document? In the strict legal meaning of the term to my mind it cannot—save of course as proof of the fact that Mr. Kareklas wrote a report to his superior officer of certain information he gathered, should that fact ever be questioned.

Almost any paper may become a document in the narrower sense on occasion, when it is required to be used and becomes producible for the purpose of a case in Court; hence arises the loose use of the word and the confusion which has arisen when considering what is and what is not a document. But the term "official document" must be confined to such documents as are of themselves evidence, if admissible, of the truth of their contents, otherwise their contents would require to be more strictly proved than is the case. The principle of admitting in evidence official documents without formal proof was extended to a numerous class of cases by the D. E. Act, 1845—Taylor, Vol. I, section 7. And so, I think, the meaning to be given to the words "official document" in section 20 (1) (*a*) of the Civil Wrongs Law, is a document emanating from an official source which, if duly authenticated, is producible as evidence.

It is claimed by the Attorney-General that this report together with the preface written by the respondent has been made into an official document by being printed by the Government Printer and being published in the customary manner of official publications, the publication bearing the Royal Arms, and having the number of the appropriate minute paper, and stating that the copyright was reserved to the Crown. I cannot, however, see how a paper not otherwise, an official document can be made an official document in this manner, *i.e.*, by having copies of it printed. The Documentary Evidence Act, 1845 (8 & 9 Vict., C. 113), provided, *inter alia*, that "All copies of private and local personal "Acts of Parliament not public Acts, if purporting to be printed by "the Queen's printers, and all copies of the journals of either House of "Parliament, and of royal proclamations, purporting to be printed by "the printers to the Crown, or by the printers to either House of Parlia-"ment or by either of them, shall be admitted as evidence thereof "by all Courts, judges, justices, and others without any proof being "given that such copies were so printed."

1939
April 14.

IOANNIS KYRIAKIDES v. SIR HERBERT RICHMOND PALMER.

In 1907 the Evidence (Colonial Statutes) Act was passed which provided, *inter alia*, as follows:—

" 1.—(1) Copies of Acts, Ordinances passed (whether before or after " the passing of this Act) by the Legislature of any British " possession, and of orders, regulations and other instruments " issued or made (whether before or after the passing of this Act) " under the authority of any such act, ordinance or statute, if " purporting to be printed by the Government Printer, shall be " received in evidence by all Courts of Justice in the United " Kingdom without any proof being given that the copies were " so printed."

Where is the authority for saying that this publication must be judicially noticed as emanating from the Government Printing Office ? There is, as far as I know, no authority under any law for printing anything of the kind as an official publication, the contents of which are to be judicially noticed without proof. It is not a copy of an Act or Ordinance or of an Order or Regulation or other instrument made thereunder. Even if under some statute the report of Mr. Kareklas was admissible in evidence of the facts set out therein, without proof of its authentication by seal or signature, and copies of it were published in the ordinary way by the Government Printer, those copies would not be receivable in evidence as if they were originals. The sole legal effect of having documents printed by the Government Printer is that it makes the copies producible in evidence without proof; but this only applies to the particular classes of documents mentioned in the Evidence (Colonial Statutes) Act; it does not in any way give authority to any document or alter its status or nature. The Government *Gazette* is not an official document; though it may and often does contain copies of official documents which copies would be judicially noticed.

Now, if the report of Mr. Kareklas is not an official document, the preface, which is a mere commentary on it, is certainly not an official document. Although the original report purports to contain information—of a kind, however, not admissible on the testimony of the author in a Court of Law—the preface does not contain information, but merely comment. So that on no grounds could it be held to be an official document.

An examination of the wording of section 20 (1) (*a*) will show that a publication of the kind in question could not have been contemplated in the exemption afforded. Immediately after " document " it speaks of " proceedings "—such as proceedings in an Executive Council or Advisory Council, or other proceedings directly relating to the Government of the Colony. Official documents must, therefore, bear a sense

restricted to documents of such kind as are officially made under authority of statute, ordinance or law by the proper officer in the course of his regular duty and can be relied on as authoritative.

If the Governor by publishing any writing through the Government Printing Office could make that writing an official document, and claim absolute privilege for the contents, there would be no force in section 20 (1) (c) which specifically accords that privilege to any matter published by Order of the Governor-in-Council.

The onus was on the respondent to show that this publication was an official document, since he claimed that anything contained therein was absolutely privileged on that account; and he has not discharged that onus by proving that it is a paper of the class recognized by law to be an official document.

Now, to consider the question of whether the words contained in it of which the appellant complains are capable of a defamatory meaning or the meaning assigned to them by the appellant, in other words could they in any circumstances constitute a libel. To quote Salmond on Tort: " Libel or no libel has always been essentially a question for the " jury. The right of the jury is, however, subject to one limitation. " The judge must first be satisfied that there is sufficient evidence to go " to the jury—that is to say, he must be satisfied that the statement is " reasonably capable of the meaning which the plaintiff alleges and " complains of, and if he considers that it is not so capable the case " must be withdrawn from the jury altogether." Lord Halsbury in *Nevill v. Fine Art and General Ins. Co.*,1897, A. C. 76, states as follows:—

" The words must be susceptible of a libellous meaning in this sense: " that a reasonable man could construe them unfavourably in such a " sense as to make some imputation upon the person complaining."

The words complained of must be considered in reference to the report, on which they are a commentary. They were describing the difficulty of action by the Legislature at a time when hardened criminals, such as were described in the report, preyed upon the country terrorizing the inhabitants. Very clearly the whole wording of the preface is sympathetic to the members of the Legislature, who, as it points out, were in a very difficult position. The document—I can now call it a document as it is evidence in this case—says, and these are the words particularly complained of: " The British Administration was at that " time dependent on members of a Legislative Council, who, to maintain " their own position and place, had perforce to work through and with " those elements in the country districts which, as Mr. Kareklas points " out, were the only strong elements, albeit these latter maintained " their strength by ' gangster ' methods."

1939
April 14.

IOANNIS KYRIAKIDES
v.
SIR HERBERT RICHMOND PALMER.

Now this passage does not, in the first place, say " all the members " (of the Legislative Council) nor does it even say " the members." And indeed the passage could not have referred to all the members, since some of them were either *ex officio* members, or nominated by the Government. It, therefore, can only refer to certain of the members representing country districts, since it mentions only that " members " to maintain their own position and place, had perforce to work " through and with those elements in the country districts, etc." It is clear, therefore, that the words complained of do not apply to all the members of the Legislative Council, but the words may be read to include the word " certain." It would then read " dependent on " certain members of a Legislative Council who maintain, etc." Why should the appellant consider that he is one of those certain members ?

But, assuming that he rightly regards himself to have been one of those members, or that other reasonable men might think he was included amongst them, he was not, to my mind, in any way defamed. It is not suggested that members encouraged the strong elements to resort to gangster methods in order to get themselves elected to the Legislature or maintain their position. Nor is it even suggested that the members approved of these methods or that they even knew of them. Members had a duty to perform in representing their districts, and the only way in which good or bad men could get themselves elected was by working through and with—that must be taken to mean for election purposes—the strong elements in the districts. There is nothing that I can see in this preface in any way defamatory of the members personally, in fact the use of the word " perforce " shows that the writer had no intention of casting any aspersion on their action in working through the strong elements, whatever the private behaviour of those elements might be. Indeed the use of the word " perforce " removes any possibly defamatory meaning that the words might otherwise have.

There is no possibility of reading into the words the meaning alleged by the appellant's counsel, viz.: that the appellant was a person of such low political morality and generally of such bad character as to work through and with notorious murderers and gangsters for personal advantages, namely: in order to maintain his (the appellant's) position and place as member of the said Legislative Council, or that he " failed " the Administrative in the performance of duty or trust placed in him."

Actually the words complained of are no more defamatory than complimentary. They contain no allegation that the appellant or other members were in the Legislative Council for their personal advantage, but mention them only as assisting the Administration, and point to the great difficulties that they, in thus striving to do their duty to their

country, as members of the Legislative Council, had to encounter; since the persons on whom they perforce had to rely for support were people of a low standard of public morality.

For the foregoing reasons I cannot hold that publication of the words complained of could possibly have the effect of bringing the appellant into hatred, ridicule or contempt.

Now to consider whether the action is one in which the Court might, in the exercise of its inherent jurisdiction, dismiss, it has been suggested by counsel for the appellant that when there is an arguable point the action should be left to go to trial. The cases, he cites, however, in support of his argument, are decisions under Order XXV, rule 4 (*Evans v. Barclays Bank*, P. & P., p. 75, *Wyatt v. Palmer*, 1892, 2 Q.B., 110), and do not affect this case, which has been based primarily on the inherent jurisdiction of the Court and evidence admitted. The Annual Practice under " Inherent Jurisdiction " states: " Any action which the " plaintiff cannot prove and which is without any solid basis, may be " stayed under this inherent jurisdiction as frivolous and vexatious."

In considering what is frivolous and vexatious the Court is entitled to go outside the pleadings, if any, and look into the whole case, as was done by Romer, J., in *Remington v. Scoles* (1897) 2 Ch. 1. In that case by extraneous evidence it was shewn that the defence was a sham and as such an abuse of the process of the Court and should be struck out, which was done.

In a recent case on the subject, *Appleton v. H. Littlewood Ltd.*, (All England Law Reports, 1939, Vol. 1, p. 464), an application was brought under Order XXV, rule 4, and under the inherent jurisdiction of the Court asking that the action be stayed or dismissed as frivolous and vexatious and an abuse of the process of the Court, and that no reasonable cause of action was disclosed. The application was supported by an affidavit of facts which would not be admissible under Order XXV, rule 4. It was held by the C.A. affirming the Order of Asquith, J., that the action failed *in limine* and that the Statement of Claim should be struck out. This action is very much like the one before us at present and is authority for dismissing this appeal, if we feel that the action could not succeed if allowed to go to trial.

As I have already pointed out, the question of whether words can have a libellous meaning in the sense defined by Lord Halsbury is a question of law for the judge. If it is held by the judge on application such as this that the words cannot be libellous, then he must hold that the action is bound to fail. I am satisfied that this action is bound to fail and, I think, it should be dismissed *in limine*.

1939
April 14.

IOANNIS KYRIAKIDES
v.
SIR HERBERT RICHMOND PALMER.

In order to decide whether this action is frivolous and vexatious and an abuse of the process of the Court justifying the Court in dismissing it under its inherent jurisdiction, the Court is entitled to look at the action from other aspects. In the first place, when no libel exists the action has no basis, but even if the action allowed to proceed, it is clear that the appellant could not possibly succeed without proving express malice in the respondent since the preface would come under the qualified privilege accorded under section 21 of the Civil Wrongs Law. This, as is apparent from the nature and contents of the preface itself, would be impossible of proof.

The position then is that the appellant has, for purposes of his own, brought an action against the Governor of the Colony, the representative of His Majesty, in the Courts of the Colony; and one which, in the opinion of the Court, cannot succeed—an action in relation to a publication made by the Governor purporting to act in his official capacity for the good of the community. It seems to me to be no more than an attempt to harm the respondent by suggesting that he was acting maliciously in his official capacity as Governor, and to lower his prestige and dignity by having his action criticized in the Courts of the Colony in which he represents His Majesty; and I cannot regard the claim as *bona fide*, or believe that the respondent brought the action with any hope of obtaining a verdict in his favour. The action is clearly therefore vexatious and such an abuse of the process of the Court that the Court should exercise its inherent jurisdiction to stay or dismiss it. For the above reasons I agree that this appeal should be dismissed with costs.

Appeal dismissed with costs.