

BOVILL, C.J. & SMITH, J. he remains in occupation without any interference on the part of Rahme or her heirs, he has got all that he could get under the contract and has no further rights against anyone. If he had wished to protect himself against all difficulties in the future he should have been careful not to have paid the purchase money until the sale had been carried out completely by the registration of the property in his own name. Under the circumstances of the present case we are clearly of opinion that the plaintiff has no right to relief against anyone.

TOPAL AHMET C. HJ. HUSSEIN AGHA.

Appeal allowed.

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REGINA

Plaintiff,

v.

LOIZIDES AND NICOPOULOS

Defendants.

“DEFAMATION”—“INSULT”—JUSTIFICATION—EVIDENCE OF WHEN ADMISSIBLE—PRESS LAW, ARTICLES 18, 20, 23 AND 24—ADDITION OF COUNT TO INFORMATION—OMISSION TO ASK ACCUSED IF THEY WISHED TO MAKE STATEMENT—IRREGULARITY—CYPRUS COURTS OF JUSTICE ORDER, SECTION 124 AND 145.

Article 18 of the Press Law of 1865 defines two offences, “defamation” and “insult,” and Article 23 provides that where a person has defamed a Government Official by attributing to him acts done in his official capacity, proof that such acts have in fact been committed, as alleged, shall free the person charged with defamation from liability to punishment.

The defendants having written and published of the prosecutor, a Government Official, amongst other things, that he was guilty of unseemly conduct without alleging any specific instances, and also that he used indecent and unseemly language, tendered evidence on their trial with the view of showing that these statements were true: HELD that the evidence was inadmissible.

An omission by the Court at a trial by information to ask the accused person, at the close of the case for the prosecution, whether he wishes to make a statement in a case where he is defended by an advocate who makes a defence and calls witnesses, is not such an irregularity as prejudices the accused in his defence and entitles him to have his conviction set aside.

The defendants were tried before the District Court of Nicosia on informations charging them with offences under Articles 20, 23 and 24 of the Ottoman Press Law and offences under Articles 213 and 214 of the Ottoman Penal Code.

The defendant Loizides was charged as the* writer of certain libellous statements concerning the prosecutor, an Inspector of Police in the employment of the Government of Cyprus; and the defendant Nicopoulos as the printer and publisher of the same in a newspaper called the Φωνή τῆς Κύπρου.

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By the consent of the defendants their cases were tried together.

After the defendants had pleaded to the informations, the Court at the request of the Queen's Advocate, directed a count to be added to each information charging each defendant as an accomplice with the other in writing and publishing the libellous statements.

The libels complained of were contained in two numbers of the Φωνή τῆς Κύπρου; and, inter alia, attributed to the prosecutor that he was guilty of unseemly conduct in cafés, without specifying any instances or whether he was acting in an official capacity or otherwise and also that he made use of unbecoming and indecent language.

By Article 18 of the Press Law of 1865 [Leg. Ott., Vol. III., p. 320], every allegation of fact reflecting on the honour or character of another is termed a "defamation" and every expression of contempt or abuse not containing specific allegation of fact is termed an "insult."

Articles 20 and 24 prescribe the penalties in the case of persons found guilty of "defamation" and "insult," respectively, where the person defamed or insulted is a Government Official.

Article 23 states that the penalty prescribed shall be strictly applied in the case of any person who has defamed any Government Official in his personal capacity or any other person: but where the defamation refers to acts of a Government Official in his official capacity or to the acts of a person who has acted in an official capacity, if the truth of the matters imputed be proved, the person guilty of the defamation shall not be punished, and if the libellous statement contains also an "insult" the punishment for this shall be imposed only.

Evidence was adduced on behalf of the prosecution to show that the defendant Loizides was the writer of the defamatory articles and that the defendant Nicopoulos published them.

On behalf of the defendants, evidence was tendered to prove the truth of the allegations contained in the libels complained of, to the effect that the prosecutor had been guilty of unbecoming conduct in public places and had

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made use of insulting and indecent language. The Court rejected this evidence on the ground that evidence in justification must be confined to the proof of acts done by the prosecutor in his official capacity.

At the close of the case for the prosecution the Court omitted to ask the defendants if they wished to make any statement to the Court.

The Court convicted the defendant Nicopoulos of being an accomplice in the publishing of the defamatory statements under Article 45 of the Ottoman Penal Code, and found the defendant Loizides guilty as the writer of the libellous articles and punishable under Article 24 of the Press Law.

At the request of the defendants the District Court directed special entries to be made in the records to the effect that the Court had no jurisdiction to add counts to the informations charging the defendants as accomplices in the acts of each other under Article 45 of the Penal Code. The Court refused to direct other special entries to be made as desired by the defendants.

The defendants applied to the Supreme Court under Section 138 of the Cyprus Courts of Justice Order, 1882, for an order directing the following special entries to be made in the records, viz. : (1). "That the District Court rejected evidence of conversations of the prosecutor with various persons, and of acts of the prosecutor of an unofficial character committed whilst he was in the discharge of his duty and at other times, such evidence being tendered in justification of the charge of indecency brought against him in the alleged libel." (2). That at the close of the case for the prosecution the Court did not inform either of the accused that he might make any statement he pleased as to the charge against him.

Diran Augustin and Pascal Constantinides for the applicants.

The alleged libel contained allegations that the prosecutor misconducted himself in cafés and used unbecoming and insulting language. The evidence that we desired to put before the Court was to prove the truth of these allegations. Such evidence is admissible under the Press Law, Article 23. With regard to the second special entry, the Court is bound to ask the accused if they have any statement to make under Clause 124 of the Cyprus Courts of Justice Order, 1882. They might possibly have then made statements which would have altered the view the Court took of the case.

Judgment: We think that the first special entry now asked for should not be allowed. The question as to whether the defendants had a right to adduce the evidence which the Court below rejected depends upon the construction to be placed upon Article 23 of the Press Law. That law in Section 18 defines two offences which we may term "defamation" and "insult." Under Section 23, where a defamation relates to acts of a personal character, the penalty provided by the law is to be strictly applied. Where however the defamation relates to precise acts done by an official acting in his official capacity, then proof that he has committed the acts alleged against him is admissible and will free the person making the defamatory statement from liability in respect of it. It appears to us to be clear that the law means that the press shall not be used as the vehicle of personal attacks against anyone. The allegations in the libel sought to be justified do not appear to amount to a "defamation," and certainly did not allege acts done by the prosecutor in his official capacity, but only amount to an "insult" and we are therefore of opinion that the evidence tendered on behalf of the defendants was not admissible.

With regard to the second special entry asked for, there clearly was an irregularity, and we will order this special entry to be made, and the matter can be discussed when the appeal on the special entry, made by the District Court comes on for hearing.

The appeal of the defendants on the special entries came on for hearing.

Pascal Constantinides, for the defendant *Loizides* :

The points for argument are two, viz. : (1) as to whether the Court were right in adding a count against the defendant as an accomplice under Article 45 of the Penal Code, and (2) that the proceedings were irregular, inasmuch as the accused was not asked at the close of the case for the prosecution whether he had anything to say. First : I contend that the addition of the count to the information prejudiced the defendant in his defence and, therefore, never should have been made.

The amendment really was equivalent to a new information, and the count should not have been added until a new charge had been made against the defendant. Article 45 of the Penal Code says that an accomplice shall be punished in the same way as a principal except in cases where the law has made a different provision. Article 7 of the Press Law provides who is the accomplice of the person responsible for carrying on the newspaper, and I contend that such a person alone is an accomplice.

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He cited Clause 150 of the Cyprus Courts of Justice Order, 1882.

As to the second point it is difficult to establish that the defendant was prejudiced by not being asked if he wished to make a statement, but it must be assumed in his favour.

Diran Augustin, for the defendant Nicopoulos.

The Queen's Advocate, for the prosecution, was not called upon.

Judgment: We are of opinion that this conviction must be confirmed. There are two points raised for our consideration by the special entries. The first is, whether the accused were prejudiced in their defence by the addition of another count to the informations against them. Under Section 145 of the Cyprus Courts of Justice Order, 1882, the Court is empowered and required to make every amendment in the information which may be necessary to enable it to fulfil the purpose for which it is intended; provided that no such amendment shall be made in such a way as to prejudice the accused in his defence or to subject him upon conviction to a more severe punishment than he would be liable to if he were convicted on the information in its primary form. There is no pretence for saying that the amendment made here to the information would subject the accused to a more severe punishment; and it is difficult to see how they could be prejudiced in their defence by it. If the Court thought it necessary they were perfectly right in permitting the amendment. As to the second point that the accused were not informed of their right to make a statement, Section 140 of the same Order in Council says that no conviction shall be set aside for irregularity unless it be such as to prejudice the accused. The accused do not show us how they have been prejudiced; and if their advocates had chosen they might have called them as witnesses. The defence was a lengthy one and no suggestion was ever made that the accused had anything which they desired to state to the Court. For these reasons we are of opinion that this appeal must be dismissed.

Conviction affirmed.
