

SMITH, C.J.
&
MIDDLE-
TON, J.
1893.
Oct. 28.

[SMITH, C.J. AND MIDDLETON, J.]

IN THE MATTER OF A CHARGE AGAINST ALI BEY
HADJI HASSAN.

INSULT—WORDS SPOKEN IN THE ABSENCE OF COMPLAINANT—
PUBLICITY—ARTICLES 213 AND 214, OTTOMAN PENAL CODE

A person using slanderous or insulting words of another, even although that other person be not present, will be liable to conviction and punishment under Article 214 of the Ottoman Penal Code.

APPEAL of the defendant from the District Court of Nicosia.

The defendant was convicted of insult under Article 214 of the Ottoman Penal Code by a Magisterial Court and sentenced to 14 days imprisonment.

The words complained of were spoken publicly, and were clearly within the terms of the Article, but were spoken by the defendant in the absence of the complainant.

The defendant appealed to the District Court by whom the conviction and sentence of the Magisterial Court were confirmed.

The defendant appealed.

Diran Augustin for the appellant.

The defendant had a quarrel with the brother of complainant, and in abusing him used also slanderous words about his sister, the complainant, who was not present. The question is, can the law be applied where the person insulted is absent? It is clear from the Article itself that the person insulted or slandered must be present. The Turkish text has the words "to a person." The Court will be crowded with these cases if it is held that insult can be punished, if uttered in the absence of the person insulted.

Templer, Acting Queen's Advocate (Mr. Macaskie with him) in support of the conviction.

It is clear that an offence under Article 213 may be committed in the absence of the person slandered, and there

is no reason in principle why the offence specified in Article 214 may not be similarly committed. The law does not in terms say that the slanderous words must be used in presence of the person slandered. The facts are without dispute. It is not in the least necessary that the person insulted should be present. It is, moreover, important that absent persons should be protected.

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Judgment : The defendant in this case appealed from a judgment of the District Court affirming a conviction by a Magisterial Court under Article 214 of the Ottoman Penal Code. The point raised by the appellant was that the person who was "slandered" if we may use this expression, was not present at the time the slander was uttered; and that consequently no offence under Article 214 was committed by him. Mr. Diran Augustin stated in his argument before us that the words *حقیقہ دیکر کیسہ* in the Turkish text, mean "to or in the presence of another" and clearly imputed the necessity of the complainant's presence. We have consulted Redhouse's Dictionary and also the Chief Turkish Translator to the Government, and both these authorities state that the words *حقیقہ دیکر کیسہ* unquestionably mean "in respect of or concerning another person." Moreover a commentary on the law by a Turkish lawyer which we have also consulted, states that in the opinion of the Commentator the person insulted or slandered need not be present. On course this commentary does not necessarily bind us, but its coincidence with the wording of the text, gives it considerable weight. We do not think that we can read into the law words that it does not contain, and we are, therefore, both clearly of opinion that the slander need not be uttered in the presence of the person slandered, and that this was the intention of the law. We also think that Article 213 should be read with Article 214, as in our view the former governs the latter with regard to the slander being spoken publicly. To bring a person within the law in our opinion the slander must be uttered publicly, and not over a dinner table or in private conversation with friends, which might by some means be overheard. There is no doubt in this case that the words complained of were uttered publicly, and were within the meaning of Article 214, and that the defendant was properly convicted thereunder.

Nov. 10.

SMITH, C.J. It has been argued by counsel for the appellant, that if
& we decide as we have done, the Courts will be crowded
MIDDLE- with cases of this description. We are, however, of a
TON, J. contrary opinion, believing that the effect of our judgment
RE ALI BEY will be to make people more careful in future of the language
HJ. HASSAN. they use with regard to other persons. We think that the
conviction should be confirmed ; and that the sentence on
the defendant should commence from the date of the
expiration of the sentence he is now undergoing. The
judgment of the Court will be, therefore, that the defendant
be imprisoned for 14 days from the date mentioned.

Appeal dismissed. Conviction confirmed.
