

1979 May 25

[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

PANICCOS AGATHANGELOU,  
*Appellant-Defendant,*

v.

S. MOUSOULIDES & SONS (SUCCESSORS),  
*Respondents-Plaintiffs.*

(Civil Appeal No. 5587).

*Libel—Slander—Injurious falsehood—Partnership, importers and distributors of knitting machines—Letter to their principals affecting their business reputation—Words complained of rightly found by trial Court to be defamatory—Proof of special damage not necessary—Sections 17(1), 18(1) and 25(1) of the Civil Wrongs Law, Cap. 148.* 5

The respondents-plaintiffs, who are a partnership carrying on business throughout Cyprus and who supply the whole of the Cyprus market with knitting machines and spare parts thereof, brought a libel action against the appellant-defendant claiming that he falsely and maliciously wrote and published the following letter to the principals of the respondents in Switzerland: “..... Owing that your agent is not in the position to allow us service we decided to apply to your address for the supply to us the necessary spare parts as per the enclosed order”. 10 15

The trial Court adjudged the appellant to pay the sum of £100 as damages to the respondents, having come to the conclusion that the contents of the above letter were of a defamatory nature and they were intended to injure the respondents’ reputation in their trade: 20

*Upon appeal by the defendant:*

*Held*, that the test of deciding whether the words complained of were capable of having any libellous meaning is whether under the circumstances in which the writing was published, reasonable 25

men, to whom the publication was made, would be likely to understand it in a libellous sense, that if a libel is calculated to injure an individual in his trade it is not necessary to allege or prove special damage to found the action, that the trial Judge  
 5 rightly reached the conclusion that the words complained of were of a defamatory nature, and that, accordingly, the judgment appealed from must be affirmed (see sections 17(1), 18(1) and 25(1) of the Civil Wrongs Law, Cap. 148

*Appeal dismissed*

10 Cases referred to:

*Capital and Counties Bank Ltd v. Henty & Sons* [1882] App Cas 741 (H L) at p 745,

*Navill v Fire Art and General Insurance Company* [1897] A C 68 (H L) at p 72,

15 *Lewis v Daily-Telegraph Ltd* [1964] A C 234 (H L) at p 277,

*Morgan v Odhams Press Ltd* [1971] 1 W L R 1239 (H L) at pp 1242-1243,

*South Hetton Coal Company v North-Eastern News Association* [1894] 1 Q B.D 133 at pp 145-146

20 **Appeal.**

Appeal by defendant against the judgment of the District Court of Nicosia (P. Michaelides, D J) dated the 21st April 1976 (Action No 1455/72) whereby he was ordered to pay  
 25 £100 – damages to plaintiffs in respect of statements contained in a letter written by the defendant

Appellant appeared in person.

*S. Spyridakis*, for the respondents

HADJIANASTASSIOU J. gave the following judgment of the Court. This is an appeal by the defendant Panicos Agathangelou from the judgment of a Judge of the District Court of  
 30 Nicosia given on 21st April, 1976, by which the plaintiffs S Mousoulides & Sons (Successors) were awarded damages in respect of statements contained in a letter written by the defendant on 10th January, 1972.

35 **FACTS:**

The facts are simple and are these The plaintiffs are a partnership duly registered and are carrying on business throughout Cyprus. They brought a libel action against the defendant

claiming that he falsely and maliciously wrote and published a letter despatched by post to the firm Passap-Export of CH 8953 Dietikon, Zurich, Switzerland, who are the principals of the plaintiffs, the plaintiffs being their agents who supply the whole of the Cyprus market, *inter alia*, with knitting machines and spare parts thereof. This letter allegedly contained matters concerning the plaintiffs and the way they are carrying their business as agents of the said firm. This letter was drafted in bad English, and, it reads ". . . . Owing that your agent is not in the position to allow us service we decided to apply to your address for the supply us the necessary spare parts as per the enclosed order "

It was not denied that the said letter was also published to some members employed by the defendant, viz., to the clerk to whom the defendant dictated the said letter, to the clerk who translated the said letter from Greek to English, in view of the fact that the defendant's knowledge of English was very limited, to the clerk who transcribed the said letter on a typewriting machine, and to the clerk who enclosed the said letter in an envelope addressed to Passap of Switzerland. In addition the said letter was published in Switzerland to the directors of the firm in question on 19th January, 1972.

Ero Mousoulidou the wife of Mr. Mousoulides told the Court that she was a partner in the firm and she has been working for a period of 30 years. They were importing sewing machines, spare parts, knitting machines and other household appliances. They were the exclusive agents and distributors of the Swiss Sewing machines Passap for a period of 20 years. The defendant worked for them as a salesman and collector from 1968 till the 20th May, 1970, when he was dismissed from their service because his working ability had dropped to the minimum, and because he used to keep money to himself from the total receipts of sales. Because of that they filed an action against him, which was still pending before the Court at that time. In January, 1972, their principals informed them of the letter of the defendant by which he ordered directly a number of spare parts. Questioned as to how she viewed the order of the defendant for the amount of £1,600.- she said that the said order was an unreasonable one, because such order for spare parts would have been sufficient to repair 1,000 sewing machines.

The defendant had purchased from them only one knitting machine and one in the name of his niece, but at no stage required their services for the two knitting machines.

5 On the contrary, the defendant repudiated the allegations of the plaintiffs that the contents of the letter were defamatory. He also said that he had been working for 15 years with the plaintiffs, and when he was dismissed from their service, he filed an action in Court complaining that he was wrongly dismissed. This action, he admitted, was dismissed. He further explained 10 that before he wrote to the principals of the plaintiff firm, he went to purchase various accessories and they had charged him three times over and above the real price. In cross-examination, he said that he applied for spare parts and they refused to supply him.

15 Our Civil Wrongs Law Cap. 148 deals with the question of defamation and section 17(1) provides:-

20 "Defamation consists of the publication by any person by means of print, writing, painting, effigy, gestures, spoken words or other sounds, or by any other means whatsoever, including broadcasting by wireless telegraphy, of any matter which—

- (a) imputes to any other person a crime; or
- (b) imputes to any other person misconduct in any public office; or
- 25 (c) naturally tends to injure or prejudice the reputation of any other person in the way of his profession, trade, business, calling or office; or
- (d) is likely to expose any other person to general hatred, contempt or ridicule; or
- 30 (e) is likely to cause any other person to be shunned or avoided by other persons.

(2) .....

Provided that the Court may take such or like circumstances into account in awarding compensation.

(3) .....

35 (4) It is not necessary for defamation that a defamatory meaning should be directly or completely expressed; and

it suffices if such meaning, and its application to the person alleged to be defamed, can be collected either from the alleged defamatory statement itself or from any extrinsic circumstances, or partly by the one and partly by other means.”

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Regarding publication of defamatory matter section 18(1) says:-

“A person publishes defamatory matter if he causes the print, writing, painting, effigy, gestures, spoken words, or other sounds or other means by which the defamatory matter is conveyed to be dealt with, either by exhibition, reading, recitation, description, delivery, communication, distribution, demonstration, expression or utterance, or otherwise, so that the defamatory meaning thereof becomes known or is likely to become known to any person other than—

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(a) the person defamed thereby; or

(b) the husband or wife of the person publishing the defamatory statement so long as the marriage is subsisting.”

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As regards injurious falsehood, section 25(1) is in these terms:-

“Injurious falsehood consists of the publication maliciously by any person of a false statement, whether oral or otherwise, concerning—

(a) the profession, trade, business, calling or office, or

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(b) the goods; or

(c) the title to property, of any other person:

Provided that, subject to subsection (2) of this section, no person shall recover compensation in respect thereof unless he has suffered special damage thereby.”

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We think we should have added that the Civil Wrongs Law shall be interpreted in accordance with the principles of legal interpretation obtaining in England and expressions used in it shall be presumed so far as is consistent with their context and except as may be otherwise expressly provided to be used with

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the meaning attaching to them in English Law and shall be construed in accordance therewith.

### *LIBEL*

Time and again it was said that the gist of the torts of libel and slander is the publication of words conveying a defamatory imputation. A defamatory imputation is one to a man's discredit, or which tends to lower him in the estimation of others, or to expose him to hatred, contempt or ridicule, or to injure his reputation in his office, trade or profession or to injure his financial credit. The standard of opinion is that of right-thinking persons generally.

The trial Judge having read the letter in question, and having addressed his mind to the provisions of our law, considered whether the words published were capable of a defamatory meaning, and whether in fact they defamed the plaintiffs. The Court came to the conclusion that its contents were of a defamatory nature and that they were intended to injure the respondents' reputation in their trade. Finally in the light of the circumstances of this case, the trial Court awarded the sum of £100.— as damages against the defendant.

On appeal, the appellant who appeared in person, argued that the trial Judge erred in finding that the contents of the letter addressed by him to the principals of the respondents contained defamatory statements affecting the plaintiffs in their business or trade, and that the words complained of were not reasonably capable of bearing the meaning alleged by them or any defamatory meaning against the respondents.

The question in deciding whether the words are capable of having any libellous meaning, appears in the leading case of *Capital and Counties Bank v. Henty*, [1882] App. Cas. 741 H.L. In that case Lord Selborne L.C. had this to say at p. 745:—

“They were under no obligation to give, and they did not give, any reason; and it would, in my opinion, be arbitrary and not reasonable, to imply, from the mere words of the circular, an imputation upon the plaintiffs' credit or solvency. The test, according to the authorities, is, whether under the circumstances in which the writing was published, reasonable men, to whom the publication was

made, would be likely to understand it in a libellous sense. Sometimes (perhaps generally) that test may be satisfied from the mere words of the documents; in this case, I think it is plain that the mere words of the document are not enough for that purpose.”

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In *Nevill v. Fine Art and General Insurance Company*, [1897] A.C. 68 H.L. Lord Halsbury said at p. 72:—

“I have listened with all the attention which it deserved to the argument which has been presented to us today, and I am unable now to know what is the sense in which any ordinary reasonable man would understand the words of this communication so as to expose the plaintiff to hatred, or contempt or ridicule. In saying that, of course, it is necessary to take into consideration, not only the actual words used, but the context of the words, and the persons to whom the communications were made.”

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Then, having read the letter complained of, he said:—

“I am myself wholly unable to understand how any ordinary reasonable man could have construed that one sentence in a business letter as being the smallest reflection on Lord William Nevill’s capacity as a business man, or upon his honour, or how it could in any respect expose him to hatred, contempt or ridicule.”

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In *Lewis v. Daily Telegraph Ltd.*, [1964] A.C. H.L. Lord Devlin said at p. 277:—

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“The natural and ordinary meaning of words ought in theory to be the same for the lawyer as for the layman, because the lawyer’s first rule of construction is that words are to be given their natural and ordinary meaning as popularly understood. The proposition that ordinary words are the same for the lawyer as for the layman is as a matter of pure construction undoubtedly true. But it is very difficult to draw the line between pure construction and implication, and the layman’s capacity for implication is much greater than the lawyer’s. The lawyer’s rule is that the implication must be necessary as well as reasonable. The layman reads in an implication much more freely; and unfortunately, as the law of defamation has to take

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into account, is especially prone to do so when it is derogatory.”

Finally, in *Morgan v. Odhams Press Ltd.*, [1971] 1 W.L.R. 1239 H.L. Lord Reid said at pp. 1242–1243:—

5 “The next protection for the defendant is that at the end of the plaintiff’s case the Judge may be called upon to rule whether the words complained of are capable of referring to the plaintiff in light of the special facts or knowledge proved in evidence. The main question in this case is—  
10 how is he to make that decision? It is often said that because a question is for the Judge to answer it must be a question of law. I have more than once stated my view that the meaning of words is not a question of law in the true sense, even in other departments of the law where a  
15 much stricter test of the meaning of words is adopted than in the law of libel. It is simply a question which our law reserves for the Judge.

The question of how words should be read in libel cases was discussed in *Lewis v. Daily Telegraph Ltd.* [1964] A.C. 234 and I shall not repeat what was said there. We have  
20 to consider how ‘ordinary sensible men’ (per Lord Devlin at p. 286) would understand the words. So here the Judge had to consider how ordinary sensible men, having the special knowledge proved, could understand the words  
25 complained of.”

The next and most important question is whether this action will lie without allegation or proof of special damage. As we have said earlier, the trial Judge reached the conclusion that the words complained of were of a defamatory nature and  
30 awarded to the plaintiffs the sum of £100.— damages. In *South Hetton Coal Company v. North-Eastern News Association*, [1894] 1 Q.B.D. 133, Key L.J., dealing with the same question said at pp. 145—146:—

35 “One of the differences between libel and slander is that, in an action for libel, i.e., where the defamatory statement is printed or written and published, and not merely communicated orally, generally speaking damage is presumed, and that which is called special damage, viz., the suffering some definite loss, need not be proved or alleged. But



where the plaintiffs are two or more persons associated in partnership, the only libel of which they can jointly complain is one which may injure their joint property or their joint trade or business. The same law is applicable to a certain extent to a trading corporation. Its property or its business may be injured by defamatory statements whether written or oral. It has a trading character, the defamation of which may ruin it. If, for example, an individual, a private partnership, or a corporation were carrying on a trading business, and someone wrote and published an untrue statement that they were insolvent, or any other statement which might destroy their credit or paralyze their business, it is obvious that such a statement, if untrue, would be a libel.

Now, for a libel calculated to injure the business of a trading concern, is it the law that no action will lie, unless special damage is alleged and proved? The general rule is that, in an action for libel upon an individual, no proof of special damage is necessary. If such proof were necessary in order to lay a foundation for the action, it is obvious that in many cases the plaintiff would be put in a position of much difficulty.

But there is considerable authority upon this question. In the first place, if a slander be spoken calculated to injure an individual in his trade, it is not necessary to allege or prove special damage to found the action, that being an exception to the general rule that in actions of slander special damage must be alleged and proved: *Phillips v. Jansen*<sup>1</sup>; *Ingram v. Lawson*<sup>2</sup>; *Hayward v. Hayward*<sup>3</sup>. It would be strange if, that being so in an action for slander, it should still be necessary to allege and prove special damage in an action not for slander, but for libel of a person in respect of his trade. The presumption of damage in the case of libel is much stronger."

In the light of the authorities and for the reasons given, we affirm the judgment of the trial Judge.

1. 2 Esp. 624.

2. 6 Bing N.C. 212.

3. 34 Ch. D. 198.

Appeal dismissed with costs in favour of the respondent. Costs of the adjournment dated January 10, 1979, in favour of the appellant.

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*Appeal dismissed. Order for costs as above.*