1982 September 6

[A. LOIZOU, SAVVIDES AND STYLIANIDES, JJ.]

CHRISTOS SAVERIADES AND ANOTHER,
Appellants-Defendants,

v.

ELIAS GEORGHIADES AND 9 OTHERS,
Respondents-Plaintiffs.

(*Civil Appeal No.* 5891).

THE GENERAL PRESS AGENCY POULIAS AND KONIARIS LTD.,
Appellants-Defendants,

v.

ELIAS GEORGHIADES AND 9 OTHERS,
Respondents-Plaintiffs.

(*Civil Appeal No.* 5892).

Practice—Libel—Several defamed persons—Each one has a separate cause of action—Whether they can be joined as plaintiffs in the same action.

Libel—Apology—Essence of—Whether and in what circumstances a mitigating factor.

Damages—Libel—Matters relevant to assessment—Object of an award of damages—Sum awarded could not be higher than the lower sum for which any of the defendants could be held liable—Compensatory damages—Exemplary damages—Joint tortfeasors—One actuated by malice and the others not—Damages against them not to be aggravated by malice of one of them.

Damages—Appeal against award of—Principles on which Court of appeal interferes with an award of damages made by a trial Court—Libel—Highly defamatory article—Award of £3,000

in favour of nine plaintiffs against three defendants—Neither wrong in law nor so extremely high as to make it an entirely erroneous award—Rather a moderate estimate—Sustained.

Damages—Joint tort—Joint tortfeasors—Only one assessment of damages may be made in an action against joint tortfeasors for the same tort.

The respondents-plaintiffs were at all times the Committee of the Society called "ΝΕΟΚΥΠΡΙΑΚΟΣ ΣΥΝΔΕΣΜΟΣ". The newspaper "Eleftherotis" in its issue of 20.8.1976 published an article* which attacked the Society in an unprecedented fierce manner, describing its members, inter alia, as shameless traitors, social scums and scoundrels. The respondents-plaintiffs considered this article as defamatory of themselves and on 10.11.1976, sued as members of the Committee of the Society and/or in their personal capacity the appellants-defendants. Defendant No. 1 was the proprietor, defendant No. 2 the chief editor, defendant No. 3 the printer and defendant No. 4 the distributor of the above newspaper. The action against defendant 3 was withdrawn in the course of the hearing of the action because at the material time he was not the printer of the said newspaper. Three and a half months after the publication of the libel, twenty-five days after the filing of the action and about two weeks after the service of the writ on defendant 1, defendants 1 and 2 published an apology** in the above newspaper.

The trial Court after finding that the "apology was neither frank nor ungrudging nor would a reasonable person consider it as satisfactory" held that the most lenient way it could be treated was as a non-existent neutral development that neither mitigated nor aggravated the situation; and after holding that the publication complained of was defamatory of the plaintiffs they proceeded to assess the damages by making two assessments: one for £3,000 against all three defendants and a second assessment for £750 for aggravated damages against defendants 1 and 2 only and they issued judgment accordingly. Hence these appeals:

* The article is quoted at pp. 581-583 post.

** The apology is quoted at pp. 586-587 post.

Held, (1) that though each one of the plaintiffs had a separate cause of action they brought one action as members of the Committee of the Society as well as in their personal capacity and the Court made one assessment and issued one judgment for all plaintiffs, awarding an aggregate amount to be shared by the several plaintiffs; that since there is no complaint by the plaintiffs; that since the defendants have nothing to suffer by it because the probabilities are that if the damages have been severally assessed, there would have been nine times the damages given; and that since the plaintiffs have no objection to take the amount awarded and divide it amongst themselves, the defendants rightly did not complain.

(2) That an apology, especially a prompt one, is a mitigating factor; that the apology should be sufficient which means practically sufficient; that the essence of an apology is that it should not only contain an unreserved withdrawal of all imputations made but that it should also contain an expression of regret that they were ever made (see p. 585 post); that this Court is in agreement with the trial Court that the apology in this case was ineffective and could not in any way be deemed as a mitigating factor; and that having regard to its contents, the time and the general circumstances pertaining to it, it could not in any way extenuate the damages to be awarded by the Court in this case.

(3) That the trial Court in assessing damages is entitled to take into consideration the nature of the libel, the conduct of the plaintiff, his position and standing, the mode and extent of the publication, the absence or refusal of any retraction or apology and the whole conduct of the defendant from the time when the libel was published down to the very moment of judgment; that it may take into consideration the conduct of the defendant before action, after action and in Court at the trial of the action and also the conduct of his counsel who cannot shelter his client by taking responsibility for the conduct of the case; and it should also take into account the evidence led in aggravation or mitigation of damages.

(4) That this Court is disinclined to reverse the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance, they would have given a higher or a lesser sum; that in order to

justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled.

(5)(a) That the object of an award of damages is to restore the plaintiff, as far as money can do so, to the position he would have been in if the tort had not been committed; that for many years there was a prevalent opinion that damages for libel in an ordinary case could properly include an element of punitive damages, sometimes called exemplary damages, although neither of those expressions had been precisely defined; that if the plaintiff elects to sue all tortfeasors jointly, say, the author, the proprietor and the publisher, and the author is actuated by malice and the others are not, the damages against them are not to be aggravated by the malice of the author; that the sum awarded could not be higher than the lower sum for which any of the defendants could be held liable; that the sum recoverable by a plaintiff must represent the highest common factor, that is the lowest sum for which any of the defendants can be held liable on this score; that the conduct of defendants No. 1 and 2 and the line of cross-examination by their counsel rightly aroused the indignation of the Court; that in the course of the trial defendant No. 4 dissociated himself from defendants No. 1 and 2, admitted the publication in its calumnious nature, he expressed his sorrow and regret for the injury caused to the feelings of the plaintiffs and attempted to take cover behind the apology published on 5.12.1976; that the conduct of defendant No. 4 was not tainted either with malice or with other aggravating behaviour.

(5)(b) That guided by the aforesaid principles and taking into consideration all relevant factors in this case and all the facts as found by the trial Court, with which this Court finds itself in agreement—the apology was not sufficient and none of the defendants can obtain any benefit nor the damages can be reduced because of that purported apology—it was not persuaded by counsel for the defendants that the assessment of the damages made by the trial Court at £3,000.- for the nine plaintiffs

is either wrong in law or so extremely high as to make it an entirely erroneous award; that this Court is of the view that it was a rather moderate estimate; and that it does not in any way contain any element reflecting the indignation aroused; accordingly the submission of counsel for defendant No. 4 to the contrary has no merit.

(6) That only one judgment and one assessment of damages may be made in a single proceeding for a joint tort; and that therefore the separate judgment of £750 against defendants No. 1 and 2 is contrary to law and will be set aside.

Appeal No. 5981 *partly allowed.*
Appeal No. 5982 *dismissed.*

Cases referred to:

Ley v. *Hamilton* [1953] 153 L.J. 386;

Risk Allan Bey v. *Johnstone* [1868] 18 L.T. 620 at p. 621;

Ward Jackson v. *Cape Times* [1910] W.L.D. 257 at p. 263;

Dynes v. *Natal Newspapers* [1937] N.P.D. 85;

Lafone v. *Smith*, 28 L.J. Ex. 33;

Bevan and Others v. *Spectator Ltd.*, The Times, November, 22, 23, 1957;

Cassell & Ltd. v. *Broome* [1972] 1 All E.R. 801 at p. 824;

Markt & Co., Limited v. *Knight Steamship Company, Limited* [1910] 2 K.B. 1021, 1040-41;

Booth and Others v. *Briscoe* [1876-77] 2 Q.B. 496, 497;

Flint v. *Lovell* [1935] 1 K.B. 354 at p. 360;

Davies v. *Powell Duffryn Associated Collieries Ltd.* [1942] A.C. 601;

Sir Panayiotis Cacoyiannis v. *Vassos Papadopoulos and Another*, 18 C.L.R. 205;

Kemsley Newspapers Ltd. v. *Cyprus Wines & Spirits Co. Ltd.* "*KEO*" (1958) 23 C.L.R. 1;

Tessi Christodoulou v. *Nicos Savva Menicou* (1966) 1 C.L.R. 17;

Costas Ch. Constantinides v. *Yiangos Hjiloannou* (1966) 1 C.L.R. 191;

General Press Agency "Poulias & Coniaris Ltd." v. *Christoforos Christofides* (1981) 1 C.L.R. 190;

Livingstone v. *Rawyards Coal Co.* [1880] 5 App. Cas. 25 at p. 39;

Rooks v. *Barnard* [1964] 1 All E.R. 367;

McCarey v. *Associated Newspapers Ltd. and Others* [1964] 3 All E.R. 347;

C.R. Taylor (Wholesale) Ltd. and Others v. *Hepworths Ltd.*, [1977] 2 All E.R. 784 at pp. 792-793;

Egger v. *Viscount Chemsford & Others* [1964] 3 All E.R. 406 at p. 412;

Clark v. *Newsam and Edwards*, 154 English Reports 55 at p. 59;

Heydon's Case [1611];

Bryanston Finance Ltd. and Others v. *de Vries and Another* [1975] 2 All E.R. 609.

Appeals.

Appeals by defendants 1, 2 and 4 against the judgment of the District Court of Nicosia (Stavrinakis, P.D.C. and HjiConstantinou S.D.J.) dated the 23rd September 1978 (Action No. 5145/76) whereby the defendants were adjudged to pay jointly and severally to plaintiffs the sum of £3,000.- and defendants 1 and 2 were ordered to pay in addition to the above sum a further sum of £750.- as damages in an action for libel.

A. Eftychiou, for the appellants in appeal No. 5891.

A. Indianos, for the appellants in appeal No. 5892.

A. Paikkos, for the respondents in both appeals.

Cur. adv. vult.

A. LOIZOU, J.: The judgment of the Court will be delivered by Mr. Justice Stylianides.

STYLIANIDES, J.: This is a libel action. In 1975 the "ΝΕΟΚΥΠΡΙΑΚΟΣ ΣΥΝΔΕΣΜΟΣ" was organized. It was registered under the Societies and Institutions Law, 1972. The plaintiffs were at the material time the Committee of the Society. Their names were published in the local press.

On the occasion of the departure from Cyprus of the then President of the Republic, the late Archbishop Makarios III, and the playing of the Greek national anthem, this Society issued a communique described by the trial Court as a careful, mild, inoffensive communique, expressing the view shared by a wide section of the public, that the Greek national anthem,

which has a place in the hearts of the Greek Cypriots—being connected for a generation with the struggle for liberation from the colonial yoke, should not be played on such occasions as this causes damage to the strengthening of the independent State of Cyprus and helps the theory of Turkey of the non-existence of the Cyprus State but of two communities which are nothing but an extension of the mother countries, and called for abandonment of this wrong habit without sentimentalism. (See exhibit No. 10).

This publication served as the spring-board for an article in newspaper "Eleftherotis" in its issue of 20.8.1976 under the general heading "Comments and Views" and the subheading "Οι Γραικύλοι". The plaintiffs considered that the publication of "Eleftherotis" was defamatory and on 10.11.1976 filed this action against four defendants to vindicate their reputation under the Law.

The nine plaintiffs sued as members of the Committee of the said Society and/or in their personal capacity. The defendants were described in the writ as the proprietor, the chief editor, the printer and the distributor—the vendor—of "Eleftherotis".

The case was tried by the Full District Court of Nicosia. In the course of the hearing the action against defendant No. 3 was withdrawn as at the material time he was not the printer of the said newspaper. It was decided that defendant No. 1 was the proprietor, defendant No. 2 the chief editor and defendant No. 4 was the distributor-vendor of the said paper at the material time. The publication complained of was plainly defamatory and they proceeded to assess the damages. They made two assessments: One against all three defendants—£3,000.- and a second assessment for £750.- for aggravated damages against defendants No. 1 and 2 only, and they issued judgment accordingly.

The three defendants, aggrieved from this judgment took two appeals: The one was taken by defendants No. 1 and 2 and the other by defendant No. 4. The two appeals were taken by this Court together.

The grounds of appeal argued before us are:-

Counsel for defendants No. 1 and 2 contended that the trial

Court wrongly took the view that the apology of defendants No. 1 and 2 was not only a mitigating but an aggravating factor; the amount of £3,000.- is manifestly excessive and/or in substance and in fact amounts to exemplary damages; the trial Court wrongly adjudicated against defendants No. 1 and 2—appellants—the additional sum of £750.-, aggravated damages.

Counsel for defendant No. 4 argued that the amount of £3,000.- is manifestly excessive; the trial Court took into consideration factors which it ought not to; they failed to take into consideration the apology published by defendants No. 1 and 2 and instead they treated it as a neutral development; and they failed to take into consideration the conduct of defendant No. 4 from the date of the filing of the action until judgment, and they applied a wrong measure of damages.

The Law recognizes in every man a right to have the estimation in which he stands in the opinion of others unaffected by false statements to his discredit. This right is protected in our Law. No man may disparage or destroy the reputation of another. Defamation is an infringement of the reputation of a person.

The Court in assessing damages is entitled to take into consideration the nature of the libel, the conduct of the plaintiff, his position and standing, the mode and extent of the publication, the absence or refusal of any retraction or apology and the whole conduct of the defendant from the time when the libel was published down to the very moment of judgment. They may take into consideration the conduct of the defendant before action, after action and in Court at the trial of the action and also the conduct of his counsel who cannot shelter his client by taking responsibility for the conduct of the case. They should also take into account the evidence led in aggravation or mitigation of damages.

THE LIBEL:-

It is a rather short article, under the general heading "Σχόλια καὶ Ἀπόψεις" (Comments and Views) and the sub-heading "Οἱ Γραικύλοι". The full text reads:-

"Οἱ Γραικύλοι.

Ὁ Νεοφανὴς Νεοκυπριακὸς Σύνδεσμος διεμαρτυρήθη δι' ἀνακοινώσεως του, ὅτι θεωρεῖ 'λανθασμένη συνήθεια' τὴν

ἀνάκρουσιν τοῦ 'Ελληνικοῦ 'Εθνικοῦ "Υμνου καὶ ὅτι πρέπει νὰ ἐγκαταλειφθῆ ἡ 'λανθασμένη αὐτὴ συνήθεια'. Οἱ ἀναίσχυντοι αὐτοὶ προδότες οὐχὶ ἀνωνύμως ἀλλὰ ἐπωνύμως ὀφείλουν νὰ παρουσιάζωνται διὰ νὰ τοὺς ἐπισημάνη ὁ Κυπριακὸς Λαός, νὰ τοὺς ἀπομονώση καὶ νὰ τοὺς περιφρονήση. Μόνον εἰς Κύπρον ἠδύνατο νὰ παρουσιασθῆ αὐτὸ τὸ αἰσχρὸν ἀνακοινωθὲν μιᾶς συμμορίας σλαυογραικύλων καθαρμάτων.

'Εντροπὴ καὶ μαζὶ καὶ ἀηδία. 'Ο 'Εθνικὸς "Υμνος καὶ τοῦ τελευταίου καὶ ἀπομονωμένου Κράτους, εἶναι σεβαστὸς ὄχι μόνον ἀπὸ τοὺς γηγενεῖς κατοίκους, ἀλλὰ ἀπὸ ὅλους ὅσους παρίστανται κοντὰ στὴν ἀνάκρουσίν του.

Καὶ ὅμως στὴν Κύπρο, τὴν Νῆσον τῶν ἁγίων, τῆς ὁποίας Πρόεδρος εἶναι ὁ προκαθήμενος τῆς ἁγιωτάτης 'Εκκλησίας τοῦ 'Αποστόλου Βαρνάβα, ἐπαρουσιάσθη τὸ ἀνήκουστον αὐτὸ ἀνακοινωθέν. Οἱ συκοφάνται τῆς ἱστορίας, οἱ ἀλῆτες τῆς πολιτικῆς τοῦ μίσους, ἐπαρουσιάσθησαν διὰ νὰ δώσουν ὅπλα εἰς τοὺς Τούρκους. Διότι ἡ προσπάθεια εἶναι πῶς θὰ παρουσιασθοῦν εὐάρεστοι εἰς τοὺς Τούρκους οἱ ὁποῖοι ἐγέμισαν τὶς πλαγιὲς καὶ τὰ κορφοβούνια μας μὲ τὴν ἐρυθρὰν ἡμισέλινον.

Στὴν μακραίωνα ἱστορίαν μας ὑπῆρξαν προδόται, ὑπῆρξαν ἄθλια ὑποκείμενα, ἀλλὰ τὸ ἀνήκουστον ἐπετελέσθη εἰς Κύπρον. Διότι δὲν πρόκειται περὶ μεμονωμένης ὑποθέσεως. Συνῆλθεν μία ἐπιτροπεία. Συνῆλθεν ἕνας ἀριθμὸς ἀτόμων. Καὶ ἐκεῖ εἶναι ἡ αἰσχρότης. Καὶ ἐκεῖ ἐπετελέσθη ἡ ἀτιμία, ὄχι ἀπὸ ἕνα ἐπιπόλαιον μισέλληνα, ἀλλὰ ἀπὸ πολλὰ κοινωνικὰ ἀποβράσματα.

'Εντροπὴ. 'Εντροπὴ".

("Small Greeks.

The recent New Cyprus Association protested by a communique that it considers it as a 'wrong custom' the playing of the Greek national anthem and that 'this wrong custom' must be abandoned. These shameless traitors not only anonymously but eponymously must be presented so as to be stamped by the Cypriot people, to be isolated and condemned. Only in Cyprus could this shameful communique of a gang of slavo minigreek scums be presented.

Shame together with disgust. The national anthem

of the last and isolated state is respected not only by the native inhabitants but by all those present near at its playing.

But in Cyprus, the island of the saints, whose President is the head of the holy church of Apostle Varnavas, this unheard of communique was presented. The slanderers of history, the scoundrels of the policy of hatred appeared to give arms to the Turks. Because their attempt is how to present themselves pleasant to the Turks who have filled up the slopes and summits of our mountains with the red half-moon (flag).

In our long history there were traitors, there were miserable persons, but the unheard of has been accomplished in Cyprus. Because the point in not about an isolated case. A committee has assembled. A number of persons has assembled. And the shamefulness is there. And it is there that the dishonesty was accomplished, not by a frivolous hater of the Greeks but from many social scums.

Shame. Shame").

The Judges of the trial Court had this to say about this article:-

"The article attacks the association (society) in question in an unprecedented fierce manner, describing its members —to mention just a few of the unqualified and quite perspicuous epithets used—as shameless traitors, social scums, scoundrels, etc.".

At page 56 of the judgment they had this to say:-

"The Association (Society) expressed the views of its members in an inoffensive, careful manner but not so the author of the article, the subject-matter of this action, who elected to launch an unprecedented, ferocious attack against the members of the co-ordinating committee of the Association (Society), using epithets suitable for persons really deserving public scorn, contempt and ridicule. They are described, in an unguarded and unqualifying manner, as traitors, slanderers of history, scoundrels of the policy

of hatred, social scums and other epithets which need no further comment.

There is no concealed meaning in what is said in the libellous article. The meaning it conveys is crystal clear and the words chosen accept no other interpretation than the ones we all know and understand in every day parlance. The object of the publication is also clear. Not only it was definitely aiming at ridiculing and exposing to hatred and contempt the members of the Association (Society) but also we perceive an indirect objective which is none other than the silencing of the members of the Association (Society) in expressing their views. The defamatory nature of the article is so clear and the injury caused to the plaintiffs so tangible that calls for no further analysis".

We agree with this finding of the Court and further say that it is one of the worst, if not the worst, libel that was brought, to our knowledge, before the Courts of this country. We may add that a traitor, a social scum and a person so debased, as described in this libellous publication, cannot isolate these vices only to one department of his activity in life. Misconduct of the seriousness described in this libel is most likely to excite more contempt than misconduct in any other activities; it is likely to create personal stigma. Even counsel of all appellants said before us that this is indeed a very serious libel.

EXTENT OF PUBLICATION:-

Libel causes damage to the reputation. The extent of the mischief is to a certain degree proportionate to the extent of the publication.

Lord Atkin in *Ley* v. *Hamilton*, [1935] 153 L.J. p. 386, said:-

"It is impossible to track the scandal, to know what quarters the poison may reach; it is impossible to weigh at all closely the compensation which recompenses a man or a woman of the insult offered or the pain of a false accusation".

Surely in the case of a libel, extensive circulation causes more damages than one of more limited circulation. (*Gathercole* v. *Miall*, 15 L.J. Ex. 179).

The paper was circulated in Nicosia and all over the area

under the control of the Republic. The publication of "Eleftherotis" was rather erratic. At times it was published daily and at times weekly. In August, 1976, the publication was daily but in November and December, 1976, it was weekly. According to the statements submitted to the authorities by the said newspaper under the Law, its average circulation in 1976 was 1,100 copies per issue. The evidence of D.W.3, Kakoullis, an employee of defendant No. 4, the distributor, is that on the date of the publication of this libel—20.8.1976—only 527 copies were actually sold. The trial Court accepted this evidence and acted upon it.

The gravity of the matter cannot always be assessed by reference to the extent of the publication and certainly not in direct ratio to the number of persons to whom the defamatory matter is published.

APOLOGY:-

The defendant in any action for defamation may, after reasonable notice to the plaintiff of his intention so to do, prove in mitigation of any compensation that may be awarded that he made or offered an apology to the plaintiff before the commencement of the action or as soon afterwards as he had an opportunity, if the action was commenced before he had an opportunity of so doing. (Section 23 of the *Civil Wrongs Law*, Cap. 148).

An apology, especially a prompt one, is a mitigating factor. The apology should be sufficient which means practically sufficient. The sufficiency of the apology, the really important point, is as to the substantial sufficiency of the apology in its terms. This, of course, in part depends upon the nature of the original article. It should amount to a full and frank withdrawal of the charges or suggestions conveyed. It is for the jury to consider whether it is sufficient. (*Risk Allah Bey* v. *Johnstone*, [1868] 18 L.T. 620, at p. 621).

The essence of an apology is that it should not only contain an unreserved withdrawal of all imputations made but that it should also contain an expression of regret that they were ever made. (*Ward Jackson* v. *Cape Times*, [1910] W.L.D. 257, at 263).

Reparation must be ungrudging if it is to have any marked effect in mitigation of damages. (*Dynes* v. *Natal Newspapers*, (1937) N.P.D. 85).

The apology should be in such a manner as to counteract as far as possible the mischief done by the libel. (*Lafone* v. *Smith*, 28 L.J. Ex. 33).

A hypothetical apology should not be resorted to where the words can clearly be taken in a defamatory sense; such an apology may rebound upon the person making it. (*Bevan and Others* v. *Spectator Ltd.*, The Times, November 22, 23, 1957).

Failure to apologise may in some cases be a factor which could properly be taken before the Court as tending to aggravate the damages. (*Cassell & Co. Ltd.* v. *Broome*, [1972] 1 All E.R. 801, at 824, per Lord Hailsham of St. Marylebone C.).

Defendant No. 4 is not the proprietor of the paper. He did not publish any apology. Counsel for this defendant argued that the apology tendered by defendants No. 1 and 2 should have been taken as a mitigating factor by the Court in assessing damages for all defendants and not as a neutral event, as decided by the trial Court.

3 1/2 months after the publication of the libel, 25 days after the filing of the action and about two weeks after the service of the writ on the defendant No. 1, the following apology appeared in the issue of "Eleftherotis" of 5.12.1976:-

"Η ΑΠΟΛΟΓΙΑ.

Οἱ ὑποφαινόμενοι κ.κ. Χρ. Σαβεριάδης καὶ Γρηγόριος Γρηγοριάδης, ἰδιοκτήτης καὶ Ἀρχισυντάκτης τῆς ἐφημερίδος 'ΕΛΕΥΘΕΡΩΤΗΣ', ἀντιστοίχως προσφέρομεν πρὸς δημοσίευσιν τὴν ἀκόλουθον ἀπολογίαν σχετικῶς μὲ τὸ δημοσίευμα ὑπὸ τὸν τίτλον 'Οἱ Γραικύλοι' τῆς ἐφημερ. 'ΕΛΕΥΘΕΡΩΤΗΣ' τῆς ἐκδόσεως 20.8.1976.

'Η ἐν λόγῳ δημοσίευσις ἐγένετο ἄνευ γνώσεως καὶ μὴ ἐγκρίσεως ἡμῶν, ἐπωφελούμενοι δὲ τῆς πρώτης δυνατῆς εὐκαιρίας δηλοῦμεν ἀπεριφράστως ὅτι οὐδεμία πρόθεσις ὑπῆρχεν ἐκ μέρους ἡμῶν, νὰ δυσφημήσωμεν τοὺς κ.κ. Ἡλίαν

Γεωργιάθην, Τάκην Κονήν, 'Ανδρέαν Μουρτουβάνην, Τζιούς Παγιάταν, Ρίταν Πανταζῆ, Τάκην Παντελίδην, Βᾶσον Χατζηγέρου, Σπῦρον Χατζηγρηγορίου καὶ Χαράλαμπον 'Ασσιώτην, ὑπὸ τὴν ἰδιότητά των ὡς μελῶν τῆς Συντονιστικῆς 'Επιτροπῆς τοῦ Σωματείου ὑπὸ τὴν ἐπωνυμίαν 'Νεοκυπριακὸς Σύνδεσμος' καὶ/ἢ προσωπικῶς, ἐκφράζομεν δὲ τὴν βαθεῖαν μας λύπην διὰ τὴν θλῖψιν καὶ στενοχώριαν ἥτις ἐπροξενήθη εἰς αὐτοὺς ἐκ τῆς δημοσιεύσεως τοῦ ὡς εἴρηται δημοσιεύματός, τὸ περιεχόμενον τοῦ ὁποίου ἐν πάσῃ περιπτώσει οὐδόλως υἱοθετοῦμεν ἢ ἐπικροτοῦμεν καὶ ἀποσύρομεν ἀνεπιφυλάκτως".

"THE APOLOGY.

The undersigned Chr. Saveriades and Gregorios Gregoriades, owner and editor in chief of 'ELEFTHEROTIS' newspaper, respectively offer for publication the following apology in relation to the publication under the title 'Small Greeks' of 'ELEFTHEROTIS' newspaper of the 20.8.1976.

The above publication was published without our knowledge and our approval and taking the first possible opportunity we declare without any hesitation that there was no intent on our part to defame Messrs. Elias Georghiades, Takis Konis, Andreas Mourtouvanis, Juce Bayiata, Rita Pantazi, Takis Pantelides, Vassos HjiYerou, Spyros HjiGeorghiou and Charalambos Ashiotis, in their capacity as members of the Co-ordinating Committee of the Club under the name 'Neokypriacos Syndesmos' and/or personally, and we express our deep sorrow for the grief and trouble which was caused to them by the publication of the above publication, the contents of which we by no means adopt or applaud and we unreservedly withdraw").

The plaintiffs not only did not accept this apology but invited the Court to consider it as an aggravating development.

Defendants No. 1 and 2 in their amended statement of defence, after denying that they were the proprietor and editor, respectively, and that the article complained of was defamatory, referred to this apology.

The trial Court found that defendants No. 1 and 2 were the proprietor and editor of "Eleftherotis" paper at least as from

March, 1976, and not as from 28th August, 1976, as alleged by them in the amended statement of defence. The registration of the owner under the Cyprus Law is only prima facie evidence and no more and the trial Court rightly found, on the evidence before it, that defendant No. 1 was the proprietor as from 3.3.1976. This was not contested before us.

"Eleftherotis" in August was being published daily and later at weekly intervals. The retraction was not made before the action and it was not also made on the first available opportunity. This apology does not stem out of a genuine desire to alleviate the harm caused, to alleviate the wrongdoers' position. When the libel was published, an attack was made against the members of the Committee of the Society without naming them. The shield of anonymity was lifted by the defendants in the nature of an apology they had chosen to give, wherein the names of the plaintiffs are mentioned expressly and specifically. The names, no doubt, might have been copied from the writ of summons but the reading public could not have known of the action so as to connect the accusations and the insults with the individual persons of the plaintiffs which was long later. Any doubt to the identity of the insulted persons was dispelled and the names were published and pointed out in the form of an apology. In the apology there is a retraction of the calumnious publication and an expression of regret for any grief the libel had caused to the plaintiffs. It is stated that the contents of the article are not adopted by the defendants but no offer for amends was made.

The trial Court said (at page 59): "The present apology, in our opinion, was neither frank nor ungrudging nor would a reasonable person consider it as satisfactory", and considering the apology in its proper perspective, they felt that the most lenient way they could treat it was as a non-existent neutral development that neither mitigated nor aggravated the situation, at least as far as the body of the apology and the retraction of the libel were concerned. We agree that this apology is ineffective and could not be in any way deemed as a mitigating factor. We find no merit in the complaint of counsel for defendant No. 4 in respect of this apology. Having regard to its contents, the time and the general circumstances pertaining to it, it could not in any way extenuate the damages to be

awarded by the Court in this case. It may be further said that defendant No. 4 did not plead this apology but his counsel referred to it during the trial.

The plaintiffs are numerous. They are well educated persons of the Cyprus society. Some are civil servants and one of them is the General Secretary of the Ports Authority of Cyprus. They filed this action as members of the Committee of the Society as well as in their personal capacity. The reputation of each one of them was infringed. They have a separate cause of action. The relief sought is damages. Damages are personal only. They have to be proved separately in the case of each named plaintiff and assessed separately. (*Markt & Co., Limited* v. *Knight Steamship Company, Limited*, [1910] 2 K.B. 1021, 1040–41).

Bramwell, L.J., said in *Booth and Others* v. *Briscoe*, [1876–77] 2 Q.B. 496, 497:–

> "The only remaining matter was a doubt I had suggested, whether these eight plaintiffs, if they had any cause of action, had not eight separate causes of action, and whether they could be joined as plaintiffs. I am still of opinion they had eight causes of action, and that they might have brought eight actions; and the question is whether under the Judicature Act any difference has been made so that they can bring one action. Where a tort has been done, the tort is a separate tort to each man who complains. If indeed there were a joint tort, for instance, slander of several persons in partnership, the persons injured would have joined and maintained the action, but could have maintained the action for the joint damage only. Here there is no joint damage. Each man's character, if there is a libel, has been separately libelled. There is no doubt, therefore, that prior to the Judicature Act this proceeding would have been erroneous, but it seems to us that under Order XVI., Rule 1, these plaintiffs may well join as plaintiffs: 'All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative'. Now it seems to me that that word 'severally' must comprehend the present case. I think therefore that they may very well join; and if several actions had been brought, a consolidation might,

if there was any convenience in it, have been ordered by an application under the other rules. But although they might all join, I think, as their damages are several, their damages ought to have been severally assessed".

The Court made one assessment and issued one judgment for all the plaintiffs, awarding an aggregate amount to be shared by the several plaintiffs.

There is no complaint by the plaintiffs. The defendants have nothing to suffer by it because the probabilities are that if the damages have been severally assessed, there would have been nine times the damages given. If the plaintiffs have no objection to take the amount awarded and divide it amongst themselves, it seems to us that the defendants rightly did not complain.

Appeal from a Judge trying a case is a rehearing by the Court with regard to the questions involved in the action, including the quantum of damages. (*The Courts of Justice Law No.* 14/60, s.25; *Civil Procedure Rules,* O.35, rr. 3 and 8).

This Court is disinclined to reverse the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance, they would have given a higher or a lesser sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. (*Flint v. Lovell,* [1935] 1 K.B. 354, per Greer, L.J., at p.360, approved by the House of Lords in *Davies v. Powell Duffryn Associated Collieries Ltd.,* [1942] A.C. 601, followed and applied in *Sir Panayiotis Cacoyiannis v. Vassos Papadopoulos & Another,* 18 C.L.R. 205; *Kemsley Newspapers Ltd. v. Cyprus Wines & Spirits Co. Ltd. "KEO",* (1958) 23 C.L.R. 1; *Tessi Christodoulou v. Nicos Savva Menicou,* (1966) 1 C.L.R. 17; *Costas Ch. Constantinides v. Yiangos Hjiloannou,* (1966) 1 C.L.R. 191; *General Press Agency "Poulias & Coniaris Ltd." v. Christoforos Christofides,* (1981) 1 C.L.R. 190).

The object of an award of damages is to restore the plaintiff,

as far as money can do so, to the position he would have been in if the tort had not been committed. The principle of restitution in integrum is well embedded in the assessment of damages. Over a hundred years ago Lord Blackburn in *Livingstone v. Rawyards Coal Co.*, [1880] 5 App. Cas. 25, at 39, said:-

> "Where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which would put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation".

For many years there was a prevalent opinion that damages for libel in an ordinary case could properly include an element of punitive damages, sometimes called exemplary damages, although neither of those expressions had been precisely defined.

The matter of compensatory damages and exemplary damages was dealt authoritatively by the House of Lords in *Rookes v. Barnard*, [1964] 1 All E.R. 367. (See the judgment of Lord Devlin).

The effect of the judgment of Lord Devlin was very aptly summarized by Pearson, L.J., in *McCarey v. Associated Newspapers Ltd. and Others*, [1964] 3 All E.R. 947, in the following words:-

> "If I may summarise shortly in my own words what I think is to be derived from that case, it is this, that from henceforth a clear distinction should be drawn between compensatory damages and punitive damages. Compensatory damages in a case in which they are at large may include several different kinds of compensation to the injured plaintiff. They may include not only actual pecuniary loss and anticipated pecuniary loss or any social disadvantages which result, or may be thought likely to result, from the wrong which has been done. They may also include natural injury to his feelings; the natural grief and distress which he may feel in being spoken of in defamatory terms; and, if there has been any kind of high-handed, oppressive which increases the mental pain

and suffering which is caused by the defamation and which may constitute injury to the plaintiff's pride and self-confidence, those are proper elements to be taken into account in a case where the damages are at large. There is, however, a sharp distinction between damages of that kind and truly punitive or exemplary damages. To put it in another way, when you have computed and taken into account all the elements of compensatory damages which may be awarded to the plaintiff and arrived at a total of £X, then it is quite wrong to add a sum of £Y by way of punishment of the defendant for his wrong-doing. The object of the award of damages in tort nowadays is not to punish the wrong-doer, but to compensate the person to whom the wrong has been done. Moreover, it would not be right to allow punitive or exemplary damages to creep back into the assessment in some other guise. For instance, it might be said: 'You must consider not only what the plaintiff ought to receive, but what the defendant ought to pay'. There are many other phrases which could be used, such as those used in the extracts which I have cited from some of the decided cases. In my view, that distinction between compensatory and punitive damages has now been laid down quite clearly by the House of Lords in *Rookes v. Barnard,* and ought to be permitted to have its full effect in the sphere of libel actions as well as in other branches of tort".

Lord Reid in *Cassell & Co. Ltd. v. Broome and Another,* [1972] 1 All E.R. 801, the locus classicus on damages for libel cases, had this to say at p.836:-

"Damages for any tort are or ought to be fixed at a sum which will compensate the plaintiff, so far as money can do it, for all the injury which he has suffered. Where the injury is material and has been ascertained it is generally possible to assess damages with some precision. But that is not so where he has been caused mental distress or when his reputation has been attacked - where to use the traditional phrase he has been held up to hatred, ridicule or contempt. Not only is it impossible to ascertain how far other people's minds have been affected, it is almost impossible to equate the damage to a sum of money. Any one

person trying to fix a sum as compensation will probably find in his mind a wide bracket within which any sum could be regarded by him as not unreasonable - and different people will come to different conclusions. So in the end there will probably be a wide gap between the sum which on an objective view could be regarded as the least and the sum which could be regarded as the most to which the plaintiff is entitled as compensation.

It has long been recognised that in determining what sum within that bracket should be awarded, a jury, or other tribunal, is entitled to have regard to the conduct of the defendant. He may have behaved in a high-handed, malicious, insulting or oppressive manner in committing the tort or he or his counsel may at the trial have aggravated the injury by what they there said. That would justify going to the top of the bracket and awarding as damages the largest sum that could fairly be regarded as compensation".

Lord Hailsham said in the same case at page 823:-

"Damages remain the prime remedy in actions for breach of contract and tort. In almost all actions for breach of contract, and in many actions for tort, the principle of restitution in integrum is an adequate and fairly easy guide to the estimation of damage, because the damage suffered can be estimated by relation to some material loss. It is true that where loss includes a pre-estimate of future losses, or an estimate of past losses which cannot in the nature of things be exactly computed, some subjective element must enter in.

In many torts, however, the subjective element is more difficult. In all actions in which damages, purely compensatory in character, are awarded for suffering, from the purely pecuniary point of view the plaintiff may be better off. The principle of restitution in integrum, which compels the use of money as its sole instrument for restoring the status quo, necessarily involves a factor larger than any pecuniary loss.

In actions of defamation and in any other actions where

damages for loss of reputation are involved, the principle of restitution in integrum has necessarily an even more highly subjective element. Such actions involve a money award which may put the plaintiff in a purely financial sense in a much stronger position than he was before the wrong. Not merely can he recover the estimated sum of his past and future losses, but, in case the libel, driven underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge. As Windeyer, J., well said in *Uren v. John Fairfax & Sons Pty Ltd.:*

> 'It seems to me that, properly speaking, a man defamed does not get compensation for his damaged reputation. He gets damages because he was injured in his reputation, that is simply because he was publicly defamed. For this reason, compensation by damages operates in two ways - as a vindication of the plaintiff to the public, and as consolation to him for a wrong done. Compensation is here a solatium rather than a monetary recompense for harm measurable in money'."

The basic principle that damages awarded against a tortfeasor were to be such as would, so far as money could, put the plaintiff in the same position as he would have been in had the tort not occurred, was subject to the further principle that the damages awarded were to be reasonable as between the plaintiff and the defendant. (See *C.R. Taylor (Wholesale) Ltd. and Others v. Hepworths Ltd.,* [1977] 2 All E.R. 784, at pp. 792-793).

No tortfeasors can truly be described solely as joint tortfeasors. They are always several tortfeasors as well. In any joint tort, the party injured has his choice whom to sue. He can sue all of them together or any one or more of them separately. Even in a joint tort, the tort is the separate act of each individual. Each is severally answerable for it: and, being severally answerable, each is severally entitled to his own defence. If he is himself innocent of malice, he is entitled to be the benefit of it. He is not to be dragged down with the guilty.

(*Egger v. Viscount Chelmsford & Others*, [1964] 3 All E.R. 406, at p.412).

If the plaintiff elects to sue all tortfeasors jointly, say, the author, the proprietor and the publisher, and the author is actuated by malice and the others are not, the damages against them are not to be aggravated by the malice of the author.

Pollock, C.B., said in *Clark v. Newsam and Edwards*, 154 English Reports, 55, at p.59:-

> "It is difficult to say that there are no cases in which the motives of the parties would be important, still I think that it would be very unjust to make the malignant motive of one party a ground of aggravation of damage against the other party, who was altogether free from any improper motive".

The sum awarded could not be higher than the lower sum for which any of the defendants could be held liable. The sum recoverable by a plaintiff must represent the highest common factor, that is the lowest sum for which any of the defendants can be held liable on this score.

The conduct of defendants No. 1 and 2 and the line of cross-examination by their counsel rightly aroused the indignation of the Court. In the course of the trial defendant No. 4 dissociated himself from defendants No. 1 and 2, admitted the publication in its calumnious nature, he expressed his sorrow and regret for the injury caused to the feelings of the plaintiff and attempted to take cover behind the apology published on 5.12.76. The conduct of defendant No. 4 was not tainted either with malice or with other aggravating behaviour.

Guided by the aforesaid principles and taking into consideration all relevant factors in this case and all the facts as found by the trial Court, with which we find ourselves in agreement - the apology was not sufficient and none of the defendants can obtain any benefit nor the damages can be reduced because of that purported apology - we were not persuaded by counsel for the defendants that the assessment of the damages made by the trial Court at £3,000.- for the nine plaintiffs is either wrong in law or so extremely high as to make it an entirely erroneous

award. We are of the view that it was a rather moderate estimate. It does not in any way contain any element reflecting the indignation aroused by the conduct of defendants No. 1 and 2 at the trial. The submission of counsel for defendant No. 4 to the contrary has no merit.

It is a settled rule of Law dating back to *Heydon's Case* [1611] that only one judgment and one assessment of damages may be made in a single proceeding for a joint tort. (*Heydon's Case; Egger v. Viscount Chelmsford & Others*, (supra); *Cassell & Co. Ltd. v. Broome and Another* (supra)).

The trial Court, after referring to the above principle and the case Law on the matter, felt themselves free to differentiate between aggravating circumstances existing prior to the institution of the action and aggravation due to the conduct of some of the defendants and/or their counsel at the trial, and they proceeded:-

> "It is recommended in the text books that if the plaintiff wishes to get aggravated damages against a malicious defendant, he can sue him separately. This is, of course, sound and practical enough provided, as we have already pointed out, that there is a choice prior to the filing of the action. If there is no such a choice as in the present case, then such a course would amount to taking a plunge in the dark in anticipation that some of the defendants would eventually take an aggravating course. If there is such a development, then he may not be victimised with cost and his course would be treated as a wise one. If, however, there is no aggravated conduct by any of the defendants, the filing of separate actions against joint tortfeasors would, in all probability, land the plaintiff in the payment of costs".

They assessed £750.- against defendants No. 1 and 2 only, representing the aggravated part of the damage. They justified this departure from the settled principle of issuing one judgment as follows:-

> "It is an unfair injustice caused to the plaintiff, who is deprived of his right to aggravated damages simply because there is an innocent joint tortfeasor who should not be

penalised for the aggravating behaviour of his fellow wrongdoers ..... A malicious co-defendant, well aware of the immunity he enjoys by reason of the mitigating conduct of one of his joint tortfeasors, he is free to and may act in any way he likes even deliberately conducting himself in a manner that would, under normal circumstances, have entitled the plaintiff to receiving aggravating damages. If this is allowed, then we can foresee yet another unhappy development which is the likelihood of a secret alliance being made between co-defendants in libel actions whereby the one would do his utmost to mitigate damages and the other flagrantly and deliberately to conduct himself in a fashion likely to aggravate the situation with complete immunity. By this joint action, the reputation of the unfortunate plaintiff might eventually be ruined without being able to get aggravated damages to which undoubtedly might be entitled, getting instead an unfairly low and insufficient compensation disproportionate to the mischief done to him".

This may sound reason and justice but it is contrary to the principle that only one judgment is issued in an action against joint tortfeasors for the same tort, a principle which is well embedded for almost four centuries in the system of law we follow. If a specific departure for defamation cases only from the aforesaid principle is needed, it is upon the legislature to make specific provision for separate assessments of damages in certain cases in actions for libel. (See *Singapore Defamation Act,* Section 18).

The remedy suggested by some of the noble Lords in *Cassell & Co. Ltd. v. Broome and Another,* the institution of separate actions, may be not sufficient in view of the judgment of the Court of Appeal in *Bryanston Finance Ltd. and Others v. de Vries and Another,* [1975] 2 All E.R. 609. (See s.61(1) and s.64(1) of the *Civil Wrongs Law,* Cap. 148).

The separate judgment of £750.- against defendants No. 1 and 2 is contrary to Law and will be set aside.

In the result the appeal against the assessment of £3,000.- by all three defendants in both appeals is dismissed. The

appeal of defendants No. 1 and 2 on the additional amount is successful. The judgment appealed from is varied accordingly and in all the circumstances of this case we make no order as to costs in both appeals.

Appeal No. 5891 *dismissed. Appeal No.* 5892 *partly allowed with no order as to costs.*