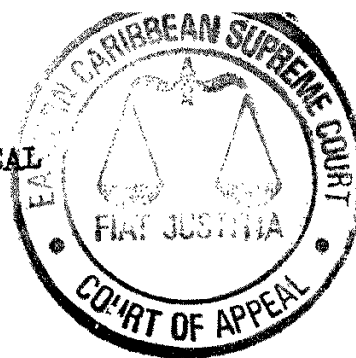


IN THE COURT OF APPEAL

ANTIGUA



Civil Appeal No. 1 of 1970

Between:

LEVI FRANCIS JOSEPH

Defendant/Appellant

and

LOUIS HIPPOLYTE LOCKHART

Plaintiff/Respondent

Before: The Honourable the Chief Justice
The Honourable Mr. Justice Gordon
The Honourable Mr. Justice St. Bernard (Acting)

McChesney George for the Appellant
C.O.R. Phillips, Q.C., B. Lake with him, for
the Respondent

1970, February 17

JUDGMENT

LEWIS, C.J.

This is an appeal against the judgment of Mr. Justice Louisy awarding \$5,000.00 damages for a defamatory article published by the appellant in a newspaper called the "Workers' Voice" of which the appellant is Editor, in an issue of that newspaper on 12th July, 1967.

The words complained of occur in an Editorial under the heading "BREAKING THE SILENCE".

There had been a split in the Union known as the Antigua Trades & Labour Union in the course of which some of their officers had been expelled from office and the respondent, who had been a member of that Union, then left the Union and assisted in his capacity as solicitor the expelled persons to commence another union; thereafter a series of meetings were held in the process of forming the new union and the respondent appeared on the platform of the new union.

"The Workers' Voice" is published by the Antigua Trades & Labour Union and in this Editorial of 12th July, the appellant referred to the fact that the respondent had left one union and gone to another, and referred to him as "a turn-coat" who was not sincere in his former adherence to the Antigua Trades & Labour Union.

-One might think-

One might think that it is perhaps not so bad for equal blows in a struggle for power between two unions, but then the article went on to say that the respondent had been advising Antiguanans to "kill each other" and that the Premier of the country and other members of the Cabinet "be removed from their posts by means of revolver bullets."

Lower down it said that "Lockhart has said enough at Hawksbill Hotel and elsewhere to convince us that he intends to incite the people to bloodshed and violence" and the Government was asked to have him imprisoned and then deported.

The respondent wrote to the paper and asked for an apology; his letter was ignored; and the action was brought.

A defence was put in in which it was pleaded that the words were fair comment and that so far as they consisted of statements of fact, those facts were true and the rest were fair comment on a matter of public interest and written and published in good faith without any malice: "the rolled-up" plea.

When the case came on for hearing, the plaintiff gave evidence and put in the newspaper. Then, amazingly, this newspaper which had pleaded "the rolled-up" plea, elected not to give any evidence at all; nothing at all even to suggest that there was any basis upon which these very highly damaging remarks had been made and published to the world. The learned trial judge had no difficulty in finding that the Editor was liable and he took into account in assessing damages certain answers which the respondent had given in the course of cross-examination about the effects of this article with regard to him and he seems to have used those answers to reduce the damages which he awarded.

An appeal has been taken and the grounds relate really to the question of damages although they are put down as separate grounds.

First of all, it is alleged that the judge did not take into account that the respondent had admitted in cross-examination that he had left one union and gone to another.

Of course, that's not the sting of the libel at all. The sting of the libel, as learned counsel admitted, is that this gentleman is accused of inciting people to murder, and learned counsel quite frankly admits that there was nothing in the evidence which in any way reduced the sting of that.

Then it was argued that the article was merely retaliatory in that the respondent had appeared on a platform which had accused the officers of the other union of inefficiency and, inter alia, dishonest motives, and it was said that the damages should be less because he made himself a party to these accusations by appearing on the platform.

There is no evidence to show whether the respondent was actually present when these accusations about the other union were made or whether he in any way identified himself with them, but the learned judge had all the evidence before him and there is no reason to believe that he did not take that fact into account in so far as there was any proof of it.

Thirdly, it was argued that hearsay evidence had been relied upon. This was a reference to a question which learned counsel who appeared in the court below for the defendant had asked the respondent as to whether there were any people who despised him, and the respondent replied "yes". Learned counsel now says that the judge was not entitled to rely on that in his assessment of damages.

In my view, there is no merit at all in that submission.

It was said that the damages were too high; \$5,000.00 was too much because the respondent said in his evidence in cross-examination that "I do not know if my practice was reduced. There are people who believed what was written in the article; what was written may be abuse in Antigua, but certainly not abuse in other places where the paper has circulation," and that before the article was published there had been some question of deporting him, but that had been dropped after the article was published.

These are the matters which have been relied on as showing that the damages are too high, but the learned judge referred to some of them, as I said earlier, because he starts his reference to that aspect of the case, the aspect dealing with damages, by referring to the facts which give rise to damages and then says "on the other hand, the respondent said....." and he refers to these matters, so that it is quite clear that he took these statements into account.

In my view, there is no ground whatsoever for

interfering with the very modest award of \$5,000.00 which was granted in this case and I would dismiss the appeal with costs.

Allen Lewis
(Allen Lewis)
Chief Justice

MR. JUSTICE KEITH GORDON:

In this matter, I agree that there is overwhelming justification for the finding of the learned trial judge, particularly when the appellant made no attempt whatsoever at the trial to prove by witnesses, or by evidence of any kind, the allegations which he set out in his defence.

I agree that there is no merit in this appeal and that it be dismissed with costs.

K.L. Gordon
(K.L. Gordon)
Justice of Appeal

MR. JUSTICE E. L. ST. BERNARD (ACTING)

I agree that this appeal should be dismissed. The only question, in my view, for the trial judge was the question of damages and he had taken all the facts into consideration and gave damages at \$5,000.00, which I think is on the low side.

E. L. St. Bernard
(E.L. St. Bernard)
Justice of Appeal (Acting)