IN THE COURT OF APPEAL

GRENADA

Civil Appeal No. 4 of 1970

Between: M. A. BULLEN
and
ALSTON ANDREW (Proprietors of the "Vanguard" newspaper) APPELLANTS

and

ERIC MATTHEW GAIRY RESPONDENT

Before: The Honourable the Acting Chief Justice
The Honourable Mr. Justice P. Cecil Lewis
The Honourable Mr. Justice St. Bernard (Ag.)

H.E.L. Hosten, Q.C. for the Appellants
E.A. Heyliger for the Respondent

1970, September 28

JUDGMENT

CECIL LEWIS, J.A.

This is an appeal against an order of a judge of the High Court in Grenada dated April 9th, 1970, in which he awarded the respondent (the plaintiff in the court below) the sum of $10,000.00 as damages in respect of a defamatory article appearing in the issue of the "Vanguard" newspaper of March 1st, 1968. The ~~respondents~~ appellants are the proprietors of this newspaper.

The article in question was captioned "City Bank threatened by Union Leader. Manager refuses to predate Account". The article as set out in paragraph 3 of the statement of claim reads as follows:

> "A certain trade union leader (meaning thereby the Plaintiff) has threatened a city Bank with closure after the Manager had refused to predate a union account. Reliable sources reported that the union leader (meaning thereby the Plaintiff) taxied to the manager's home after making an appointment with him. There the manager was asked to predate a union account in such a way that the account might appear to have been opened long ago. The manager refused pointing out not only the immorality of the thing, but also the question of the obvious errors in the annual bank statements already published.

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damages put the matter thus:

> "Province of the jury. In an action of libel "the assessment of damages does not depend on any legal rule." The amount of damages is "peculiarly the province of the jury," who in assessing them will naturally be governed by all the circumstances of the particular case. They are entitled to take into their consideration the conduct of the plaintiff, his position and standing, the nature of the libel, the mode and extent of 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 their verdict. 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, it is submitted, the conduct of his counsel, who cannot shelter his client by taking responsibility for the conduct of the case. They should allow "for the sad truth that no apology, retraction or withdrawal can ever be guaranteed completely to undo the harm it has done or the hurt it has caused."

Counsel for the appellant however contended that in two respects the trial judge took into account matters which he should not have considered and thus applied a wrong principle in assessing the damages. His first criticism was directed towards the words "position and standing". He conceded that the respondent's position was that of Premier of this State but he contended that there was no evidence as to his standing in the community, that is to say there was no evidence as to the manner in which he was regarded by the people of Grenada, whether he was held in high esteem by the people of Grenada, whether he was a good or a bad Premier, but nevertheless he said the trial judge based his assessment of damages on the standing and position of the plaintiff. He further added that there was no evidence as to the plaintiff's character and conduct. He claimed that "standing" in this particular sense meant the esteem or the reputation which the plaintiff enjoyed in the territory, and that it was separate and distinct from the word "position". Counsel stated that in the absence of evidence of the respondent's "standing" in the sense in which he interpreted this word, the respondent would only be entitled to nominal damages, but he did not mean by the use of the word "nominal" to say that he was only entitled to small damages "of the 40/- variety". He conceded that as the respondent had a judgment in his favour he would be entitled to general damages. Counsel did not cite any case in support of this submission. I am not prepared to take so restricted a view of the word "standing" in this context. The word

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"position" is a word of much broader meaning than the word "standing", and the two words are sometimes used synonymously. One meaning of "position" as defined in Webster's New Collegiate Dictionary is "relative place; situation or standing, specifically social or official rank or status;" so therefore the word "position" in the expression "position and standing" would cover here both the official and the social status of the plaintiff. What the words "position" and "standing" of the plaintiff are intended to convey in this context is his status in the community. His position in the community is that of head of Government, and obviously being head of Government he must have a certain standing.

I am accordingly not persuaded that there is any merit in this submission.

The next criticism was in connection with the judge's statement that he had taken into account the absence of an apology. Counsel said that as no apology had been asked for, none was given and therefore the trial judge in referring to the absence of an apology as one of the factors which he had taken into account in assessing damages had erred in so doing.

In a passage in his judgment appearing at page 7 of the record the trial judge stated:

> "The Defendants had originally pleaded in addition that the said words as set out in paragraph 3 of the Statement of Claim are fair and bona fide comment made in good faith and without malice on a matter of public interest."

That was one of the defences pleaded by the appellants. By an order of the judge in chambers made on the 11th August, 1969, upon the application of the plaintiff the defendants were required to serve on the plaintiff within 14 days the following further and better particulars in writing of the statement of defence, that is to say of the facts upon which the fair and bona fide comment referred to above was based, and it was therein stipulated that in default the paragraph in the statement of defence in which such comment was alleged should be struck out. The defendants failed to furnish the required particulars within the time specified in the order and the relevant paragraph in the statement of defence was accordingly struck out. So the defendants having put forward an alternative defence that the statement made was a fair and bona fide comment made in good faith and without malice on a matter of public interest later found that they could not establish it,

/and it seems

and it seems to me that at that stage it was open to them to consider the question of an apology. They did not do so and they preferred to let the matter go to trial, leaving as their only defence on record that the article complained of did not refer to the respondent. In these circumstances the trial judge, in my opinion, was perfectly justified in saying that he had taken into account the fact that no apology had been offered. The appellants were of course under no legal obligation to offer an apology but if they had an opportunity of doing so which might have resulted in the mitigation of damages and they did not use it, they cannot complain that the trial judge took this fact into account.

Those are really the two main points which counsel for the appellants took in regard to the matters which he said the judge had wrongly taken into consideration. He however briefly referred to the nature of the libel but he had to concede that it was of a very serious nature. The respondent was being accused of attempting to induce a bank manager to falsify the account books of his bank under threats of closing the bank if he did not comply. This was a very serious allegation to make against a trade union leader who was also the head of the Government, and even one of the appellants, Merrydale Bullen, conceded this in his evidence when he said "I think it is a serious allegation to make to say that a trade union leader tried to get a bank manager to predate a union account." That gives some indication of the gravity with which even one of the appellants viewed the article.

Now, as to the amount of damages awarded, counsel addressed the Court on the question of exemplary damages. He submitted that because the sum of $10,000.00 was awarded this was an indication that the damages were exemplary, but there is no evidence at all to show that the judge ever considered the question of awarding exemplary damages. This argument is based on mere speculation and I do not think that it can be entertained.

If the appellants are to succeed in their attempt to have the trial judge's award varied they must show that it was so inordinately high as to be a wholly erroneous estimate of the damage suffered. They may do this by showing that it was "out of line with a discernable trend or pattern of awards in reasonably comparable cases." (See Singh v. Toong Fong Omnibus Co. (1964) 3 All E.R. 925 at 928). Lord Morris of

Borth-y-Gest in delivering the judgment of the Privy Council in this case said at p.927:

> "In deciding this appeal their lordships think that three considerations may be had in mind:- (i) that the law as to the factors which must be weighed and taken into account in assessing damages is in general the same as the law in England; (ii) that the principles governing and defining the approach of an appellate court that is invited to hold that damages should be increased or reduced are the same as those of the law in England, (iii) - (and this is the important consideration for the purposes of this case) - that to the extent to which regard should be had to the range of awards in other cases which are comparable, such cases should as a rule be those which have been determined in the same jurisdiction or in a neighbouring locality where similar social, economic and industrial conditions exist."

The Court has been referred to one case from Barbados in which the sum of $20,000.00 was awarded as damages. This was the case of Husbands v. The Advocate Co. Ltd. reported in (1968) 12 W.I.R. 454. The plaintiff in that case was a Barrister-at-Law and held the office of Director of Public Prosecutions in Barbados. Certain scurrilous statements were published about him in the Advocate newspaper. Douglas C.J. who tried the case, commented as follows at p.463:

> "The article complained of is, in my judgment, highly defamatory, containing as it does imputations of dishonesty and oblique motive against the Director of Public Prosecutions. No more serious or damaging imputation could be made against a person having responsibility for the institution of criminal proceedings in this country. The plaintiff is therefore entitled to substantial damages which I assess in the sum of $20,000.00."

It is to be noted that the trial judge made no mention at all of exemplary or punitive damages. All he gave were substantial damages. Counsel for the appellants said that the award in this case may probably have influenced the trial judge in awarding the sum of $10,000.00 since the libel was a very serious one. I agree that the allegations in that case were of a serious and damaging nature, the trial judge said that, but in my opinion, taking the circumstances of the instant case into account, the imputations made against the respondent are of an equally serious and damaging nature. After all one has to consider to some degree the status of the individual libelled. Husbands was the Director of Public Prosecutions. Here the individual libelled was the Premier of the State and

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the head of Government and as such held a position of some importance in the community. I am not saying that because he held a position of importance in the community that the damages given to him must inevitably be large. I am far from saying that, but it must be accepted that a very serious allegation had been made against the respondent, an allegation that any person, no matter what his position, would have resented and would have taken steps to refute.

Another case to which I must refer is the case of Monplaisir v. The Voice Publishing Co. (1953) Ltd. and Others - a case decided in the High Court of St. Lucia. The plaintiff in this case was a Barrister-at-Law, a Solicitor and a Notary Royal in St. Lucia. When his declaration was filed he was Chairman of the Board of Directors and Chief Executive Officer of the St. Lucia Banana Growers' Association and a Director in the Windward Islands Banana Growers' Association. The plaintiff in his declaration alleged that the article meant and was understood to mean that he and other persons in the Banana Growers' Association had fraudulently and corruptly misappropriated, used and/or squandered at least 1½ million dollars belonging to the Association. That was the nature of the allegation made against Monplaisir. Bishop J. tried the action and his judgment was published in the St. Lucia Gazette of Saturday, 25th May, 1968. He found that there was absolutely no justification for the libel and he awarded the plaintiff damages in the sum of $15,562.50. He specifically stated in his judgment that "the Court is not entitled in this case to consider an award of exemplary or punitive damages. However, I am satisfied that I may properly consider compensatory damages."

Then there is the case of Joseph v. Lockhart, a decision of this Court in Antigua Civil Appeal No. 1 of 1970 delivered on 17th February, 1970. It was an appeal against a judgment of Louisy J., who awarded $5,000.00 to the plaintiff/respondent Lockhart for a defamatory article published by the appellant Joseph in a newspaper called the "Workers' Voice" of which he was the editor. The editorial was under the caption "Breaking the Silence". The newspaper was owned by the Antigua Trades & Labour Union and there had been a split in this Union of which the respondent Lockhart was a member. Some members had been expelled and Lockhart followed them out and formed a rival union. Thereupon the appellant published an article in the "Workers' Voice" against the respondent, in which he referred to him as a "turncoat" who was not sincere

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in his former adherence to the Antigua Trades and Labour Union. He alleged also that he had been going round advising Antiguans "to kill each other" and had suggested that the plaintiff and other members of the Cabinet should be removed from their posts by means of revolver bullets. In a certain part of the article it was said "Lockhart has said enough at Hawksbill Hotel and elsewhere to convince us that he intends to incite the people to bloodshed and violence" and Government was asked to have him imprisoned and then deported. The respondent wrote the newspaper and asked for an apology, but his letter was ignored and an action was brought.

The defence 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 in good faith without any malice. At the close of the plaintiff/respondent's case the defendant/appellant Joseph did not go into the witness box, and no evidence was called on his behalf. The trial judge had no difficulty in finding for the plaintiff. He awarded him $5,000.00 damages. The defendant appealed on the ground that the damages awarded were excessive. The Court of Appeal unanimously rejected his appeal. The Chief Justice in his judgment described the amount of $5,000.00 as "a very modest award" and said he saw no reason for interfering with it. Mr. Justice St. Bernard who was also a member of the Court said that he considered the amount of $5,000.00 to be "on the low side". One can infer from these remarks that the circumstances of this case may reasonably have justified a larger award.

Then there is the case of Evans v. Johns and the Gleaner Co. Ltd. reported in (1961) 4 W.I.R. 502. This was a case which was heard by Small J. in Jamaica. The plaintiff was a manufacturer of shoes and had for 36 years to the knowledge of the defendant carried on a shoe factory at Kingston, Jamaica. It was alleged against him in an article published in "The Star" newspaper that he had used political influence improperly to obtain a contract to supply shoes to the Kingston and St. Andrew's Corporation, and that he had falsely represented himself to be a manufacturer of shoes when in fact he was not. Small J. found that both of these statements were falsely and maliciously published of and concerning the plaintiff and he awarded him the sum of £2,400. This was on November 24th, 1961, and at that date this sum was equivalent to $11,520.00.

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On the basis of the awards in these four cases it seems to me that it can hardly be reasonably contended that the sum of $10,000.00 in the instant case was inordinately high. When one looks at the nature of the libel, and considers the position of the person libelled, also the fact that the libel was published in a newspaper circulating not only in St. George's but also in Grenville and Sauteurs, the population of which areas was given in evidence as being approximately 12,000 and 10,000 persons respectively, it does appear to me that the trial judge made an award which cannot be said to be so out of line with the awards which I have mentioned as to be considered a wholly erroneous estimate of the damage the respondent suffered. In my view, therefore, the appellants have failed to show that the trial judge acted on any wrong principles of law or that he misapprehended any of the relevant facts in assessing damages. I would accordingly dismiss the appeal with costs.

(P. Cecil Lewis)
Justice of Appeal

GORDON, C.J. (Ag.): I agree with the judgment which has just been delivered and with the reasons adduced therein. I would dismiss this appeal with costs.

(K. L. Gordon)
Acting Chief Justice

ST. BERNARD, J.A. (Ag.): I agree.

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