

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 146 OF 1992

BETWEEN:

KATHLEEN HUGGINS

Plaintiff

and

ULRIC SMITH

the Dean of St George's Anglican Church Cathedral Chapter

Defendant

Appearances:

S Commissiong Esq and Ms M Commissiong with him for the Plaintiff
O Sylvester Esq QC CMG and Ms N Sylvester with him for the Defendant

1999: November 15, 16, 29
2000: February 3, 7

JUDGMENT

[1] MITCHELL, J: This is a slander action. The Plaintiff Kathleen Huggins, (hereinafter "Mrs Huggins") is a retired bank clerk and a longstanding and prominent member of the Anglican community in St Vincent. Her husband at the time in question was a "lay recorder" at the St George's Cathedral at Kingstown in St Vincent. The Defendant Ulric Smith (hereinafter "the Dean") was before his retirement in 1999 the Dean of the Cathedral. This is an action for slander brought by a parishioner for words used by her parish priest concerning her and spoken by the priest during his sermon on a Sunday morning and which she says defamed her.

THE PLEADINGS

[2] The pleadings upon which this case was tried set out the matters alleged by the parties. By the Statement of Claim filed on 7th April 1992, Mrs Huggins claimed that by the words published to the congregation on 13th October 1991 the Dean slandered her. The words complained of were

There are those people whose greed is such that that they will do anything for money. Mrs Huggins has been selling pornographic tiles for money. There is the picture of a woman on the tiles and when you rub the picture a naked woman appears. She has been offering them to men for sale.

[3] The claim was that the words in their ordinary meaning meant that Mrs Huggins was so greedy for money that she was willing to sell pornographic material which is abhorrent and immoral, and that by this act she was committing a criminal act under the Criminal Code and was therefore liable to be punished with a sentence of imprisonment. Alternatively, Mrs Huggins had a prurient interest in sex and nudity and had been putting up for sale obscene material which is a criminal offence punishable with a sentence of imprisonment. By reason of the publication Mrs Huggins had been gravely injured in her character and reputation. Mrs Huggins claimed damages for slander, an injunction, and costs.

[4] By a Defence of 14th May 1992 the Dean denied falsely and maliciously speaking or publishing the words complained of. The first defence was a denial of the words alleged by the Plaintiff. The defence is that the Dean told the congregation that he had spoken that morning to Mrs Huggins about the ceramic plaques which she had been putting up for sale. Mrs Huggins had responded, "You should go and speak to your wife, she has a malicious and gossiping tongue." The Dean had gone on to warn the congregation against buying these plaques which tend towards pornography. He had stated, "There is a picture of a woman in scant clothing and when you apply water to the picture the clothing disappears and something different appears – the picture of a naked woman." The Dean had

further stated that Mrs Huggins had been soliciting the assistance of young women to sell these ceramic plaques but thank God the women had refused. The Dean had continued his sermon on the dignity of womanhood. Three further defences were pleaded and relied on at the trial. These were the defences of justification, fair comment, and qualified privilege. As regards justification, Mrs Huggins was soliciting young women to sell plaques with a picture of a woman in beach wear which, when wet, the clothes disappeared leaving the woman in the nude. In so far as fair comment is concerned, the Dean merely pleaded that in so far as the words consisted of expressions of opinion they were fair comment on a matter of interest to members of the church and the wider public. In so far as the defence of qualified privilege was concerned, the Dean as celebrant of the Holy Eucharist and guardian of the Sacrament having spoken to Mrs Huggins, a communicant, about the matter and afforded her an opportunity to be repentant, and Mrs Huggins having persisted in her ways and remaining unrepentant and obstinate, the Dean was under a legal and/or moral and/or ecclesiastical duty to publish such words as alleged to the congregation and the congregation had a like duty and/or interest to hear them. The further defences of estoppel and res judicata were pleaded but the Dean gave no evidence to support them. The plea in the defence merely was fact that the Bishop had appointed the committee to investigate and report to him. The civil court was without jurisdiction to adjudicate in the matter. Alternatively, the Bishop having ordered reinstatement, the matter is res judicata and Mrs Huggins was precluded from re-litigating the matter. In addresses at the close of the trial, counsel for the Dean explained that the Dean was not relying on the defences of res judicata or estoppel.

- [5] By a Reply filed on 19 June 1992, Mrs Huggins claimed that the proceedings were dictated by the malicious conduct of the Dean. The Dean's wife had not appreciated the artistic value of the decals and had led the Dean to believe that Mrs Huggins was offering for sale alleged pornographic decals. The Dean had never seen the decals, nor had he ever called on Mrs Huggins to enquire into the truthfulness of the allegations. The Dean had displayed an impulsive and uncaring

attitude to what he considered to be sinful conduct and had been aggressive in his condemnation. As further evidence of malice there was pleaded the choosing by the Dean of the festive occasion of the Harvest Luncheon to address Mrs Huggins for the first time on the matter in a loud and stentorian tone. Further evidence of malice were the remarks of the Dean during the telephone conversation with his wife and Mrs Huggins on the 13th of October. Further evidence of malice, it was pleaded, was the incident of 20th October. On no other occasion had the Dean sought to discuss the alleged pornographic decals with Mrs Huggins. Further evidence of malice was the falsely accusing Mrs Huggins of trading in pornographic decals he had never seen; recklessness as to whether or not the decals were pornographic or not; recklessly publishing allegations to the members of the Cathedral on the basis of information he had not seen; expressing the wish to make disclosure of the Plaintiff's sinful activity in open court; threatening to expose the Plaintiff in the course of the 7 am Sunday mass of 13th October 1991; actually making good his threat without ascertaining the truthfulness or otherwise of the offending allegations; excommunicating the Plaintiff from the Sacrament of Holy Communion without prior investigation or inquiry into her alleged sinful conduct; failing to ascertain whether Mrs Huggins was an open and notorious evil liver within the rubric of the Sacrament of Holy Communion; excommunicating Mrs Huggins from the Sacrament of Holy Communion in a manner not authorized by the rubric of the Sacrament of Holy Communion; willfully and disobediently refusing to discuss the excommunication of Mrs Huggins from the Sacrament of Holy Communion with the Bishop; recklessly defying the Episcopal authority of the Bishop by refusing to restore Mrs Huggins to the Sacrament after he had been ordered to do so; willfully and disobediently ordering the vergers to forbid the Plaintiff to come to the communion rail in defiance of the Bishop; disobediently informing the Bishop that he had no intention of having further communication with Mrs Huggins except in court failing a public apology by Mrs Huggins; wrongfully and maliciously refusing to accept the nomination of Mrs Huggins' husband to be entered as a member of the Parish Church Council stating that he was not a registered communicant; restoring Mrs Huggins to the Sacrament of Holy

Communion only after he had been threatened by the Bishop with suspension of his licence. Mrs Huggins denied that she had ever engaged in the act of trading in pornographic decals. The Dean had always been confused as to what was pornography. Mrs Huggins denied that any inquiry as alleged in the Defence had taken place. The plea of estoppel was novel, misconceived, and had no relevance to these proceedings.

THE FACTS

[6] The facts as I find them are as follows. After her retirement from the bank at which she worked in 1985, Mrs Huggins took up the craft of ceramics as a hobby cum business. To this effect, in the year 1988, she attended a ceramic craft course in Trinidad. After she learned the craft, amongst the things she made and sold were clay tiles with decorative decals stuck on them. Mrs Huggins sold her ceramic products both locally and abroad. She purchased materials in both Trinidad and in Miami. While in Trinidad in 1988, she purchased some materials. Included in the materials she purchased then were decals with a picture of a woman standing on a beach and wearing a swimsuit. The picture on the decal is a small one, about 2 by 4 inches. The interesting feature of this picture is that when the decal is wet, rubbing it while it is wet helps, the swimsuit disappears and the woman appears completely naked. One day in late September 1991, Mrs Huggins attached 3 of the decals to ceramic tiles. Some days after that, Mrs Huggins attended her husband's office as usual to collect him after work. She took 2 of the tiles with the decals on them with her. She showed them to her husband and to his secretary and to his office attendant. The secretary was Nadine Persaud, then aged about 25, and the office attendant was Revina Clarke, aged about 30. Mrs Huggins demonstrated the effect of water on the decals. Ms Persaud, who no longer works for Mr Huggins and is now a clerk at Police Headquarters, appears to have been offended at the demonstration. She gave evidence to that effect for the Dean. Ms Clarke called next door to one Debbie Task to come and see the demonstration of the tile. Ms Task worked for the SVG Hotel Association of which Mrs Dawn Smith

was and is the Executive Director. Mrs Dawn Smith is the wife of the Dean. After the demonstration, Ms Task went back to her office. A little after, Mrs Huggins came into Ms Task's office and told her that she had gone down to John Cato's office but he had not been in. Mr Cato was a solicitor with offices next door. Mrs Huggins asked Ms Task to try to sell one of the tiles to Mr Cato as she could not wait until he came back to his office. Mrs Huggins left one of the tiles with Revina Clarke and suggested that she should sell it to Mr Cato if he wanted it. The asking price was EC\$15.00. A few days later when Mrs Huggins was again at her husband's office, Ms Task told Mrs Dawn Smith, the Dean's wife, about the tile. Ms Task collected the tile from Mr Huggin's office, and against Mrs Huggins' protestations, took it next door to demonstrate the effect of water on it to Mrs Dawn Smith. Mrs Smith apparently did not approve of the decal and what it revealed when water was poured on it. She considered it vulgar and offensive. She also considered that it was offensive for Mrs Huggins to have asked a young woman to sell such a tile to a male. She explained to the court that it tended to lower the dignity of the woman, making her appear a woman of low moral standing. As a result, she spoke to her husband, the Dean. This was about the 3rd October 1991. She told him that Mrs Huggins was producing pornography and soliciting young girls to sell it to men for her.

- [7] There was a Harvest Luncheon held at the Girl Guides' Headquarters on 6th October 1991 and sponsored by the Anglican Church. Mrs Huggins was part of the organizing committee. On the day of the luncheon, Mrs Huggins was delivering a green salad as her contribution to the Harvest Luncheon. This was a few days after Mrs Smith had spoken to the Dean about the decal she had seen. The Dean was also approaching the building at the same time as Mrs Huggins. As Mrs Huggins was about to enter the building, the Dean spoke sharply to her. According to Mrs Huggins he said to her, "What you Anglicans would not do for money. I understand you are making pornographic plaques for sale. If a stop is not put to it I will expose you openly." The Dean's recollection is that what he actually said was , "I am ashamed of you. I never expected you would do this. I

understand you are engaged in putting up the sale of pornographic tiles.” According to Mrs Huggins she made no reply to the Dean. According to the Dean she replied, “Dawn told you. Go and speak to your wife. She has a malicious and gossipy tongue.” Mrs Huggins must have been shocked at the way the Dean accosted her and spoke to her. It is not like her to have said nothing. The Dean’s recollection of Mrs Huggins’ reaction to his words is certainly more credible than Mrs Huggins’ version. I believe the Dean that the words were spoken by Mrs Huggins as he recollects them. According to the Dean, Mrs Huggins was by the words above quite abusive to him, so he just left her. According to him there was nobody about to hear what he said to her. Mrs Huggins’ recollection is that she was embarrassed by the way the Dean spoke to her, and the occasion on which he spoke to her. The Dean was shouting at her, and there were other persons coming and going from the building while he used the words he did. There were other more private occasions which were available to the Dean when he could have spoken to her, instead of speaking so roughly to her in a public place. The Dean admitted that he saw Mrs Huggins on Sundays when she counted and delivered the collection, and that he could have spoken to her privately in his study, instead of in a public place.

[8] The following morning, Monday the 7 October 1991, the Plaintiff went to the office of Mrs Dawn Smith at the SVG Hotel Association in the same building as her husband’s office. According to Mrs Huggins she and Mrs Smith discussed the incident. Mrs Smith remembered the incident on 7th October. According to Mrs Smith, the Plaintiff told her that she must correct the ill she had done in telling her husband about the tile. Mrs Huggins clearly blamed Mrs Smith for having exaggerated the tile story to her husband, the Dean. I have no doubt that Mrs Huggins used hot words to Mrs Smith and that Mrs Smith complained to her husband.

[9] On the following Sunday 13th October 1991 there were as usual 2 morning services at the Cathedral. Mr and Mrs Huggins went as they were accustomed to

the earlier service at 5.30 am. The Dean was presiding at the services. There was a common leaflet handed out with the programme for both the 5.30 am and the 7.30 am services. That service was without incident. After the service, the Dean spoke to Mr Huggins in the presence of Mrs Huggins. Her recollection is that the Dean waved his finger in her husband's face and said, "I am going to preach on your wife's matter this morning." Her husband responded, "What did you say, father?" And the Dean repeated his words. The Dean's recollection is not materially different from that of Mrs Huggins. He recalled that he said to Mr Huggins, "I am going to be speaking about the sale of your wife's tile during the sermon." According to the Dean's evidence, he considered that by that approach he was giving Mrs Huggins an opportunity to repent. The Dean's explanation for his diffidence in speaking directly to Mrs Huggins is that after Mrs Huggins had been abusive to him on the 6th October he never again spoke directly to her. Mrs Huggins' recollection is that after the Dean had spoken the above words to her husband she retorted, "Why don't you preach on your wife's tongue." I can believe her that she said those words. I believe that it was Mrs Huggins' constant blaming of Mrs Smith for the Dean's attitude to her ceramic tiles that caused the Dean to do what he did next.

- [10] Mr Bertram Commissiong, QC, an Anglican communicant and brother of the Plaintiff's counsel at the trial attended the 7.30 am service conducted by the Dean at the Cathedral on 13th October 1991. The sermon, says the Dean, was on the theme of greed. The programme that had been handed out at the two services that day had the chosen text or topic of the day for the sermon as, "The love of money is the root of all evil." The Dean spoke in his sermon of merchants who overcharged, and other such examples. He then went on to incorporate Mrs Huggins into his sermon. He used words to the effect, "There are those whose greed is such that they will do anything for money. Take for example our own Mrs Kathleen Huggins. She has been selling pornographic plaque tiles for money. These plaques are such that there is a woman in scanty clothing on them and when you apply water to the plaques the clothing disappears. Mrs Huggins even

solicited the assistance of young women to sell these tiles for her." The Dean used in his sermon the story of the sale by Mrs Huggins of pornographic tiles as an example of degraded greed. The Dean's evidence was that he considered that the tiles were relevant to the text of the sermon, and that is why he made mention of them in the sermon. He recalled that in addition to the words above, he told the congregation that his wife had informed him of the tiles. He also told the congregation of the incident between himself and the Plaintiff on the 6th October when she had told him, "Go and speak to your wife. She has a malicious and gossiping tongue." According to Mr Commissiong QC, he was shocked at the manner in which the Dean spoke about the wife of the Dean's own lay recorder, Mr Huggins. I can believe Mr Commissiong that the sermon was the general topic of conversation among people after the service. Mr Commissiong was of the view that most people at the service with him were horrified at what the Dean had done to the Plaintiff.

- [11] During the course of the morning, Mrs Huggins received telephone calls about what the Dean had said about her during his 7.30 am sermon. I can believe that Mrs Huggins' friends were shocked and horrified at the way the Dean had included her in his sermon. According to Mrs Huggins, she also received a call from the Dean who said to her, "I heard you call my wife a gossip." She says she replied, "She is not only a gossip, she is a malicious gossip," to which he replied, "I am putting you in court." According to the Dean, he did not telephone Mrs Huggins. It was Mrs Huggins who telephoned his wife, Mrs Smith. When he realized it was Mrs Huggins quarrelling with his wife on the telephone, he said in a loud voice so that Mrs Huggins could hear over the telephone, "I am going to put you in court for calling my wife a malicious gossip." The Dean's recollection of that telephone conversation is more credible than that of Mrs Huggins. There was nothing for the Dean to call Mrs Huggins about. The telephone call must have been made by Mrs Huggins for the purpose of accusing Mrs Smith for having caused the damage of the Dean's sermon. Throughout the testimony and the correspondence of Mrs

Huggins, it is clear that she holds the wife of the Dean responsible for the entire incident.

- [12] On that day, 13th October 1991, Mrs Huggins resigned in writing from the various church committees on which she served. As she wrote to the committee of collection counters in her letter of resignation of 13th October:

Because of this violent attack on my character through the malicious gossiping tongue of one of the flock I have thought it best to give up collection counting. Who knows, one day I might just start stealing the collection! If we asked, and thought, a lot of times before putting that malicious evil member, the tongue, in gear, many a misunderstanding would have been averted.

Again, it is clear that she blamed Mrs Smith, the possessor of "the malicious gossiping tongue," for having caused the whole incident. There is no reason to think that the Dean did not see this letter sent by Mrs Huggins to his collection committee. I am sure that he did see it, and was upset at his wife being blamed by Mrs Huggins as the cause of the incident, instead of appreciating that she alone was the cause of his righteous anger.

- [13] The following Sunday 20th October 1991, there was another incident between the parties. Mrs Huggins was kneeling at the communion rail when the Dean spoke to her. He said, "You ought not to be making your communion because you are still unrepentant." Mrs Huggins' response was, "Get thee behind me, Satan." It would appear that the Dean then proceeded to administer communion to Mrs Huggins, and there was no further incident that day. But, it is clear that the Dean was incensed at the lack of compliancy and humility shown by Mrs Huggins.

- [14] Mrs Huggins continued after the sermon on 13th October 1991 to attend mass regularly, and to receive communion from the Dean. At mass, she continued to

make her contribution to the church by putting envelopes with money in the collection. On these envelopes she was accustomed to write messages, quotations from the Bible, addressed to no one in particular, but she admitted she expected them to be seen by the Dean. As she admitted in cross-examination, she does not currently engage in this practice. In re-examination she stated that she had adopted the practice of writing messages on the envelopes years before the incident, but she let slip that she had not used such fiery quotations prior to the incident. These quotations included such quotes, to give a few examples from those in evidence, as, "With God all things are possible. Matt 19:26" and "No weapon will be able to hurt you. You will have an answer to all who accuse. 54:17" and "Fear not, for I have redeemed thee; I have called thee by thy name; thou art mine; when thou passest through the waters I will be with thee, and through the rivers, they shall not overflow thee; when thou walkest through the fire, thou shall not be burned, neither shall the fire kindle upon thee ..." and so on. I find that Mrs Huggins used her quotations on the weekly collection envelopes as an opportunity to get back at the Dean, to pour hot coals upon his head, to put snakes in the Dean's brain; using his own weapon, so to say, the scriptures, against him. She certainly succeeded in incensing him to a most extraordinary degree, as the events that developed showed.

- [15] According to the Plaintiff the members of the Church were distancing themselves from her. Members of the congregation shunned her. People who had previously shaken her hand at the "greeting of peace" now declined to do so. It was suggested to her in cross-examination that she was imagining this. She admitted that she is not shunned any longer. It does not seem unlikely that in the days and months that followed the sermon, the Plaintiff was extremely embarrassed by the accusation made by the Dean, or that her friends and church colleagues would have treated her with suspicion and aversion as a result of the accusation of the Dean. It is credible and likely that the members of the Church would have reacted very negatively to the Plaintiff as a result of the public accusation of the sale of pornography by her made by someone of such authority as the Dean of the

Cathedral. It is also not surprising that after the passage of nearly 10 years, the storm in a teacup has died down, and Mrs Huggins has resumed her old relationships. But, no one can doubt that at the time the Dean's actions in delivering himself of the sermon on Mrs Huggins' tiles had a devastating effect on Mrs Huggins and her family.

[16] On 21st October 1991, the following Sunday, Mrs Huggins and her husband were at their usual 5.30 service at the Cathedral. She went to take communion. The Dean publicly reproached Mrs Huggins as she was kneeling at the communion rail. He said to her, "You know you should not be here for communion." Mrs Huggins had responded to him immediately with the words, "Get thee behind me Satan." Thereafter, the Dean escalated the contest. He wrote to the Plaintiff informing her that because there had been no sign of repentance over her recent involvement in ceramic pornographic tiles, he had no alternative but to suspend her from the sacrament of the Holy Communion until she repented of the evil. He invited her to refer the matter to the Bishop, and signed off as "Your parish priest, Ulric L Smith." From this point on the story developed through the correspondence, and the memories of the parties no longer plays a useful part.

[17] On the same day as the above letter, the Dean wrote to the Bishop enclosing a copy of his letter to the Plaintiff and informing him,

Mrs Huggins has been putting up for sale ceramic pornographic tiles/plaques at \$15.00 each, and soliciting the assistance of young women to promote sales. The young women refused, thank God. I have spoken to Mrs Huggins and have advertised her to no avail, she continues to be unrepentant. It was therefore necessary to suspend her from coming to the Holy Table due to her obstinacy.

[18] On 23rd October the Bishop wrote to the Dean a letter that was put in evidence. It read,

I write to request a meeting with you, tomorrow or on Friday, at a time mutually convenient, to discuss a matter brought to my attention by Mr and Mrs Joel Huggins. I have asked themselves to make themselves available for the meeting. You will, please, let me know what hour will be suitable for you.

[19] The Dean response to his Bishop by letter of 23rd October was,

Thank you for your Lordship's letter of request to meet with Mr and Mrs Joel Huggins. Any such meeting must be preceded by a written statement of the matter to be discussed before a date can be arranged. Yours in O.B.L., Ulric L Smith, Dean.

[20] On 25th October the Bishop replied in writing,

In response to your letter of October 23, 1991, asking for a statement of the matter to be discussed at a proposed meeting with Mr L and Mrs Kathleen Huggins, I write to advise, as requested, that the matter is an allegation you made from the Pulpit of the Cathedral "that Mrs Kathleen Huggins was involved in the sale of ceramic pornographic tiles/plaques.

[21] On 29th October the Dean replied to his Bishop as follows,

I have already informed your Lordship that I have advertised Mrs Huggins to no avail. I have spoken to her on Sunday 6th, 13th, and again on Sunday 20th when she replied "get thee behind me Satan" abuse as at other times. I have no intention whatsoever to have further discussion with Mrs Huggins except in Her Majesty's open court failing a public apology. It is too serious a matter to be kept hush-hush especially since there is no sense of repentance.

[22] On 1st November 1991 the Bishop replied to the Dean,

I am sorry to learn of your intention not to meet with Mrs Huggins. I would have hoped that the opportunity offered to discuss the issue would have resulted in an amicable resolution. I fear that the open court action to which we refer will do little credit to those involved and certainly none to the Church. I continue to uphold the matter in my prayers as I seek God's guidance in the exercise of the Ministry entrusted to us.

[23] On 4th November 1991 the Dean replied to the Bishop, inter alia,

Your Lordship's letter of 1st November was received at lunch. It all sounds to me like Sanballat's request to meet Nehemiah. Your Lordship has blundered throughout the non completed exercise by prejudice and ignorance over and over again ... In your Lordship's prejudice and haste to pull your senior priest before his accusers, time could not even be found to find out their names ... Your Lordship received a letter from me dated 21st October suspending Mrs Kathleen Huggins from the LORD'S TABLE, with a covering letter stating the reasons for such action. To date, 4th November, your Lordship has not had the common courtesy to reply. Yet you claim to seek God's guidance in the exercise of your ministry. Any wise bishop would have immediately replied, recognizing the BCP method used. That was part of your Lordship's pastoral ministry. Not replying to a letter of that nature is a gross breach of any Episcopal administration and shows little pastoral concern for the things that matter... I have no dispute with Mrs Huggins; this is not a personal matter between Mrs Huggins and myself. Moral corruption and crime are involved. I exposed both ... My Lord Bishop, your Lordship has made an exhibition of incompetence and blundering. It is made quite clear that

episcopacy does not necessarily carry with it commonsense and that gray hair is not wisdom ...

[24] On 6th November the Plaintiff wrote a letter to the Dean stating, inter alia,

... I certainly did not know that they had those peculiar characteristics when I bought them or while they were in storage. In any event, the character of nudity which they displayed will not fit into the dictionary definition of pornography or the definition of that word in the Criminal Code of Saint Vincent and the Grenadines. Surely, you must be aware that I am not the sort of person who would seek to corrupt "innocent young girls" or anybody else for that matter for financial gain ... I remain as convinced as ever that there is ample room for peace and reconciliation. To be otherwise could bring incalculable harm to the Church whose numbers have already dwindled to a paltry few. I am ready to answer any charges of wrongdoing the Church may bring against me, and to do so in accordance with the procedure laid down in the canons of the Church. Until that is done and I am found guilty of the wrongdoing alleged, I would ask that my right to Holy Communion be restored forthwith ... If the Church fails to act or is unwilling to act the Civil Court is always available to uphold the freedom of citizens whose rights have been infringed.

[25] The Dean's reply to the Plaintiff of 16th November was in the following terms,

Your letter of suspension from the Lord's Table with a covering letter from me, was referred to the Bishop of the Diocese on 21st October 1991 in accordance with the rules of the Anglican Church. I am looking forward to the opportunity to make exposure in open court, especially since there is no sign of repentance.

[26] The next step in the proceedings prior to the filing of the court action was that the Plaintiff's solicitors Messers Commissiong & Commissiong wrote a letter to the Bishop of the Diocese of the Windward Islands, but that letter was not put in evidence.

[27] On 18th December the Bishop wrote to the Dean, inter alia,

I have been in communication with the Diocesan Chancellor on the matter and upon his advice, I hereby order that you restore Mrs Huggins forthwith to Holy Communion, until my further Order in this matter. Should you fail to comply with this Order you will become liable to such sanctions for willful disobedience to my Order as the Canons of the Church prescribe.

[28] On 28th December the Dean wrote to the Bishop protesting that he had not received copies of the letter from Commissiong & Commissiong or the ruling from the Diocesan Chancellor. He reminded the Bishop that as a state of repentance is a prerequisite to the receiving of Holy Communion it would be blasphemous to willfully communicate an impenitent person. He then explained that he attached a copy of the relevant paragraphs concerning suspension and restoration which he had obeyed. The extract from the "Order for the Administration of The Lord's Supper or Holy Communion" upon which the Dean claims he based his suspension of the Plaintiff from the sacrament of communion reads in part,

... And if any of those be an open and notorious evil liver, or have done any wrong to his neighbours by word or deed, so that the Congregation be thereby offended; the Curate, having knowledge thereof, shall call him and advertise him, that in any wise he presume not to come to the Lord's Table, until he have openly declared himself to have truly repented and amended his former naughty life, that the Congregation may thereby be satisfied, which before were offended; ...

The evidence of the Dean was that, even though no member of his congregation had complained to him about Mrs Huggins, except his wife, he considered Mrs Huggins to be "an open and notorious evil liver." He understood the word "advertise" in the above text to mean "make known to the congregation."

[29] On 3rd January 1992 the Bishop replied to the above letter from the Dean,

... Your continued defiance of my order of December 18th 1991 has clearly revealed your unwillingness to accept and abide by Episcopal authority as sworn to at your Ordination. This, you must appreciate, is an issue separate and distinct from the case of Mrs Huggins, requiring a swift response ...

[30] The next piece of correspondence in evidence is a letter dated 6th January 1992 from the Dean to the Plaintiff informing her that the Bishop has ordered that she be restored to the Sacrament of Holy Communion.

[31] The correspondence continued. It would appear the Bishop appointed a committee under the chairmanship of the Archdeacon of St Vincent to institute an enquiry into the allegation made by the Dean against the Plaintiff. The committee apparently met in February 1992. The Plaintiff was present before the committee and so was the Dean, represented by counsel. The Dean's counsel submitted that the Plaintiff having been restored to communion there was no point in continuing the committee meeting. The committee accepted the submission that it could not proceed with the hearing as the Plaintiff had been readmitted to communion, and adjourned without taking any evidence or coming to any finding.

[32] On 3rd March 1992 the solicitors for the Plaintiff wrote the Dean a letter before action demanding an apology for his accusation against the Plaintiff in his sermon of 13th October 1991; a withdrawal of the offending imputations against her

character, and an estimate as to damages and costs he was prepared to pay to her. He was warned that if he failed to comply a writ would be issued against him.

- [33] No apology being forthcoming from the Dean, the Plaintiff on 19th March 1992 issued her writ in these proceedings and served it on the Defendant.

THE DEFENCES

- [34] "Pornographic" is defined in Black's Law Dictionary, Definitions of the Terms and Phrases of American and English Jurisprudence ... 1979 Edition, as,

That which is of or pertaining to obscene literature; obscene; licentious. Material is pornographic or obscene if the average person, applying contemporary community standards, would find that the work taken as a whole appeals to the prurient interest and if it depicts in a patently offensive way sexual conduct and if the work taken as a whole lacks serious literary, artistic, political, or scientific value.

The tile was produced in court and water poured on it, so that the bathing suit disappeared. The result was incapable of being described by any reasonable person as pornographic. It was nothing but a picture of a healthy young woman with her clothes off. It was fit for little children to see. The Dean was hard pressed to say in cross-examination that he found the picture obscene. He was reduced to claiming that it was the action of having to rub the picture with your finger to make the bathing suit disappear completely that made the picture pornographic. Not only did all the persons who saw the tile admit in evidence that there was nothing sexually arousing about the tile, but the Dean himself said he did not find it arousing.

[35] Pornography and obscene material amount for all relevant purposes to the same thing. Possession of pornography is not a criminal offence in St Vincent and the Grenadines. It is possession for the purpose of sale, *inter alia*, that constitutes a serious criminal offence. Section 284(1)(a) provides that any person who

for the purpose of, or by way of, trade, or for the purpose of distribution or public exhibition, makes, produces or has in his possession any obscene writing, drawing, print, painting, printed matter, pictures, posters, emblems, photographs, films, discs or other obscene objects tending to corrupt morals ... is guilty of an offence and liable to imprisonment for nine months.

To wrongfully accuse a person in public of having committed a serious criminal act has always been defamatory. The sale of obscene material is a serious criminal offence under the Criminal Code of St Vincent. In addition, to allege that a well respected member of the congregation of mature age was engaged not only in producing pornography but in soliciting young ladies to sell it for her, was a grievous accusation that must have destroyed Mrs Huggins' reputation in the eyes of many of the 400 members of the congregation to whom the words were addressed. The words used by the Dean in this case were clearly defamatory of Mrs Huggins. The Dean had been precipitate in condemning Mrs Huggins over something that was at best a form of legitimate art and at worst merely in bad taste for a mature member of the Anglican community, even an artist, and deserving at most from a parish priest of a few kindly and caring words of caution. The first defence of the Dean of justification fails.

[36] The second defence of the Dean is that he was entitled to fair comment on a matter of public interest. The right to make fair comment on matters of public interest is one of the pillars of a democratic society. There are conditions for the defence to be available. The words complained about must be comment and not a statement of an alleged fact. The matter must be one of genuine public interest.

The utterance must be without malice. The Dean's allegations against Mrs Huggins were all statements of fact and not of comment. The statements were not only defamatory, they were false. Even if the words spoken by the Dean against Mrs Huggins could be described as comment, the question arises, were they fair? Malice will defeat the defence of fair comment. It has been submitted that the correspondence between the Dean and his bishop are evidence of the malice under which the Dean operated in the matter of his accusations against Mrs Huggins. The Dean's letters on the matter of Mrs Huggins demonstrate that the Dean is naturally arrogant, devoid of any humility, lacking in understanding of the basic law of his church in particular on the steps he was required to take in preventing an evil living member of his church, for so he claims he classified Mrs Huggins, from taking communion. The letters show that the Dean acts instinctively and naturally with pure venom to persons who offend him, including in particular his superiors in the church. I do not find that they are capable of being used as evidence of malice on the 13th of October 1991. The letters from the Dean to his bishop were written after the incident we are investigating. Evil though the contents of some of them are, they are not evidence of malice on the day of the spoken words in question. The Dean's failure to ask any question about the tiles or to attempt to check his wife's story before he used such harsh words to describe Mrs Huggins, amounted to recklessness. It has been held that when a defendant published a comment with reckless indifference as to whether it was just or unjust, one might infer that the mind of the defendant was not really that of a critic, but that he was actuated by malice against the plaintiff: per Cockburn CJ in **Hedley v Barlow (1865) F&F** at p 230 quoted at page 771 of **Gatley on Libel and Slander**, 7th Edition. I do not need to infer malice in this case. Having seen and heard the Dean as he gave his evidence I am satisfied that when the Dean used the words he did to describe Mrs Huggins on 13th October 1991, the principle factor motivating him was that he was incensed at Mrs Huggins for her accusing and blaming his wife in the matter. The Dean set out to destroy Mrs Huggins because she had been so impertinent as to have insulted his wife. He was so upset at the insult, he even included it in his sermon. The defence of fair comment

does not apply to the Dean on the occasion of his sermon on Mrs Huggins on the 13th October 1991, not only because he was not commenting but stating an erroneous fact, but also he was actuated by malice.

[37] The Dean pleads that the defence of qualified privilege covered the occasion of his use of the words on the day of the sermon. An occasion is privileged where the person who makes the communication has an interest, legal, moral, or social to make it to the person to whom it is communicated, and the person to whom it is made has a corresponding interest or duty to receive it: **Adam v. Ward (1917) AC 309**. This defence exists for the common convenience and welfare of society. It presupposes that there is something the Defendant has a duty or interest to communicate. There must be a corresponding duty or interest on the part of the persons to whom the communication was sent. **Gatley** [supra] identifies 9 categories of situations which invite the defence of qualified privilege. None of them apply in this case. In **Odgers and Ritson's Digest of the Law of Libel and Slander**, 1929 Edition, at page 234 the law is stated as follows:

If a clergyman or parish priest, in the course of a sermon, 'make an example' of a member of his flock, by commenting on his misconduct, and either naming him or alluding to him in unmistakable terms, his words will not be privileged, although they were uttered *bona fide* in the honest desire to reform the culprit, and to warn the rest of his hearers. If the words be actionable, the clergyman must justify.

A parish priest delivering a sermon to his congregation in church is not protected in a action for defamation by the defence of qualified privilege.

[38] Even if the defence of qualified privilege applied to a minister preaching a sermon on a member of his congregation, if he did so with what in law amounts to malice the defence would be destroyed. The express malice evidenced by the Dean in

using the words he did in this case would have defeated the defence of qualified privilege, if it had applied to him.

DAMAGES

[39] Having found for Mrs Huggins on the issue of the liability of the Dean for the slander he committed, the question arises of an appropriate level of damages. Counsel for the Dean submitted no law on the issue of damages on the basis that Mrs Huggins had failed to prove her case and the question of damages did not arise. Counsel for Mrs Huggins submitted that an award of \$20,000.00 would be fair and in accordance with the principles cited in **Bernard Nicholas v Kertist Augustus** (Dominica Civ.App 3/1994) [unreported]. I have read the case, and cannot see how it applies to this case, except that Singh JA in the judgment of the Court of Appeal considered, in the circumstances of that case, the award of \$20,000.00 generous to the Defendant. I find that the Dean was a maliciously acting parish priest slandering the Plaintiff in the presence of some 400 parishioners, making allegations of immoral and criminal conduct on her part without a shred of evidence. He demonstrated complete arrogance in performing his role as a parish priest. He acted in a high-handed way and was utterly devoid of any pastoral concern when he recklessly tarnished the Plaintiff's name. The allegations of the Dean will forever be believed by some members of the congregation, merely because the Dean said so. Not even a judgment of this court will entirely clear her name. An amount of \$20,000.00 asked for by the Plaintiff is in the circumstances generous to the Dean. Given that Mrs Huggins can be said to have contributed by her words to the Dean concerning Mrs Smith to have raised his ire, that amount of an award is also fair. I have no hesitation in awarding that sum to be paid by the Dean to Mrs Huggins as a token of compensation for the wrong he did to her.

[40] Costs to the Plaintiff to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge