[VASSILIADES, TRIANTAFYLLIDES, JOSEPHIDES, JJ.]

SOPHOCLES S. SOTERIADES,
Appellant-Defendant,

v.

ANDREW GILES,
Respondent-Plaintiff.

(*Civil Appeal No.* 4491)

Civil Wrongs—Injurious falsehood—Civil Wrongs Law, Cap. 148, *section* 25—*Finding of trial Court—Malice—Evidence adduced before trial Court could not sustain a finding of malice—Nor such finding would be reasonably sustained on such evidence—Publication complained of not a malicious attempt to distort matters to the detriment of respondent.*

Appellant appeals against the judgment of the Full District Court of Nicosia in civil action No. 3880/61, given in favour of respondent on his claim for injurious falsehood. He was awarded £150 damages.

The action was brought for libel, as well as, for injurious falsehood under section 25 of the Civil Wrongs Law, Cap. 148, but this appeal is not concerned with the claim for libel which has failed before the District Court. The main issue argued in appeal has been whether there has been a finding by the trial Court that the publication of the circular-letter, dated the 15th August, 1961, the subject-matter of the proceedings, was made " maliciously " as provided under section 25, and, if there has been such a finding, whether such finding could be reasonably sustained on the evidence adduced before the trial Court.

For some years before the circular-letter in question was written, the plaintiff was the sole agent of Littlewoods Pools and the defendant was the sole agent of the Sherman Pools.

In July, 1961, Littlewoods bought Shermans and sent their representatives to Cyprus to make the necessary adjustment and arrangements here. They saw the respondent who was until then the main Littlewoods agent ; and they also saw the appellant, and another person, who were the two Sherman's main agents. They appointed them, all three, to be, severally, Littlewoods main agents in Cyprus, with equal standing *vis-a-vis* the principals.

On the 15th August, 1961, the defendant addressed the circular letter in question to some of his former sub-agents in the Shermans business in Cyprus ; some of these, sub-agents were at the same time the plaintiff's sub-agents in the Littlewoods business. In consequence of that letter, the plaintiff has instituted the present action.

Held, (1) *per* TRIANTAFYLLIDES, J., *in delivering the judgment of the Court* : it may be said that this is, indeed, a borderline case, as far as malice is concerned, and we would not have felt it proper to disturb the judgment of the trial Court had we not felt certain that the evidence adduced could not sustain a finding in favour of plaintiff on this issue, an issue in which the burden of proof lay on him from the outset of the proceedings.

(2) As found by the trial Court the appellant addressed the letter in question to his *own* former sub-agents (in relation to the agency of Shermans Pools) some of whom happened to be also the sub-agents of respondent, (in relation to the Littlewoods Agency).

(3) It is quite true that, by the said letter the appellant may have caused some pecuniary loss to the respondent, in the sense that he may have taken away some of his sub-agents or collectors, but so long as this was only a consequence of an effort made by him to protect his own interests, one cannot presume from this, that the action of appellant was malicious.

(4) Looking at the letter in question as a whole, one could possibly say that it was not presenting a very clear picture, but on the oher hand, one cannot at all say that it was a malicious attempt to distort matters to the detriment of the respondent.

(5) As appellant has succeeded on this ground of absence of evidence of malice, the judgment of the Court below has to be set aside and the appeal allowed. It is not necessary to go into any other issues.

(6) Each party should bear its own costs, both in the trial Court and here before us.

(*Ii*). *per* VASSILIADES, J.:

(1) It is obvious, I think, at this stage, that this action is the result of the very strained relations which existed between the parties at the material time. The same strained and unfriendly relations which caused considerable difficulty at

the trial where the appellant conducted his own case in person, in a manner exhibiting considerable ill-feeling which may, probably, have led the trial Court to the conclusion that there was malice in the letter complained of. The strong feeling governing the attitude of the litigants at the trial, which obviously caused considerable difficulty to the Court, affected, in my opinion, their decision on the issue of malice.

(2) But if the case be taken out of the thick smoke of feeling prevailing at the trial—which, with the assistance of counsel, could well be done here—the position appears clearly, in my opinion. It can be seen in the first part of the judgment, where very rightly, the trial Court connects this case with the fact that for some years before July, 1961, when the circular letter the subject-matter of the action was written, the plaintiff was the sole agent of Littlewoods Pools and the defendant was the sole agent of the Sherman Pools. That is an important factor in the present case.

(3) The trial Court found that in consequence of the said circular-letter which contained a falsehood—they thought—concerning his business, the plaintiff suffered pecuniary damage. The falsehood which the trial Court found consists in that the appellant represented himself as the sole agent of Littlewoods.

(4) As I have already said, if this letter is read in the background in which this case developed, as set out in the judgment of the trial Court, one cannot, I think, reach the conclusion that the defendant represented himself as being now the sole agent of Littlewoods, to the exclusion of the plaintiff. On the contrary, as pointed out by learned counsel in the course of the argument, in this very letter, the appellant makes specific reference to the plaintiff in a way which can leave no doubt to the kind of a person to whom the letter is addressed that the plaintiff continues to be very much in business.

(5) On this basis, the falsehood upon which the whole claim rests, is no longer there ; and on that ground I am of the opinion that the claim could not be sustained.

(6) As regards costs, I am in full agreement with the view taken by the other members of the Court that this being a border-line case which developed in the circumstances set out in the judgment there should be no order for costs either in the action or in the appeal.

(*III*) *per* JOSEPHIDES, J. :

(1) Even on the assumption that the statement made by the appellant (defendant) in the circular letter to his former sub-agents, read in its context, could be taken to mean that he was the sole agent of Littlewoods in Cyprus (and not one of the main agents), which would be untrue, I do not think that the respondent-plaintiff has discharged the onus cast on him of proving malice on the part of the appellant ; and proof of actual malice is a necessary ingredient to sustain an action of injurious falsehood under the provisions of section 25 of our Civil Wrongs Law, Cap. 148.

(2) In the present case it would appear that the appellant made the statement for the protection of his interests and not with intent to injure the respondent, and the action cannot therefore be sustained, but I should add that this is a borderline case.

The Order : In the result the appeal must succeed ; the judgment of the trial Court be set aside ; the action of the plaintiff be dismissed, with no order as to costs here or in the trial Court.

Appeal allowed. Judgment of the Court below set aside. Action of the plaintiff dismissed. No order as to costs here or in the Court below.

Cases referred to :

Halsey v. *Brotherhood* (1881) 19 Ch. D. 386 at pp. 388, 389 ;

Wren v. *Weild* (1869) L.R. 4 Q.B. 730.

Appeal.

Appeal against the judgment of the District Court of Nicosia (Evangelides & Ioannides, D.JJ.) dated the 29th April, 1964 (Action No. 3880/61) whereby the defendant was adjudged to pay the amount of £150 to the plaintiff as damages for injurious falsehood.

L. Demetriades with *Chr. Chrysanthou*, for the appellant.

G. J. Pelaghias, for the respondent.

VASSILIADES, J. : The judgment will be delivered by Mr. Justice Triantafyllides. We have discussed the matter in the meantime.

TRIANTAFYLLIDES, J. : This is an appeal from the judgment of the Full District Court of Nicosia in Civil Action No. 3880/61.

The action was brought for libel, as well as, for injurious falsehood under section 25 of the Civil Wrongs Law, Cap. 148.

We are not concerned in this appeal with the claim for libel which has failed before the District Court. This appeal is against the judgment given in favour of respondent on his claim for injurious falsehood. He was awarded £150 damages.

One of the main issues argued before us has been whether there has been a finding by the trial Court that the publication of the circular-letter, the subject-matter of the proceedings, was made " maliciously " as provided under section 25, and, if there has been such a finding, whether such finding could be reasonably sustained on the evidence adduced before the trial Court.

It is clear that there is no express finding on the issue of malice, contained in the judgment, under appeal ; on the other hand, we feel that the learned trial Judges, who appear to have gone into this case very carefully, must have had this requirement in mind—it is clear from the record that it was brought to their notice during the hearing—and they must have taken it that malice had been duly established before they gave judgment for the respondent.

On this issue of malice, this Court is in as good a position to judge it as the trial Court was, because the main relevant evidence is the aforesaid letter itself, *exhibit* 3, as viewed in the light of circumstances, which are, more or less, common ground.

It may be said that this is, indeed, a border-line case, as far as malice is concerned, and we would not have felt it proper to disturb the judgment of the trial Court had we not felt certain that the evidence adduced could not sustain a finding in favour of plaintiff on this issue, an issue in which the burden of proof lay on him from the outset of the proceedings.

As found by the trial Court the appellant addressed the letter in question to his *own* former sub-agents (in relation to the agency of Shermans Pools) some of whom happened to be also the sub-agents of respondent, (in relation to the Littlewoods Agency).

In doing so, the appellant was clearly attempting to explain to the said sub-agents the changed circumstances in his business and to protect his own interests. It must not be lost sight of, that Shermans having been taken over by Littlewoods, and appellant, respondent, and another person having been appointed as agents of Littlewoods in Cyprus, of equal but independent status, it was only natural for appellant to wish to protect his interests. He did not address the said letter to any sub-agent of respondent who had not been his own sub-agent.

It is quite true that, by the said letter the appellant may have caused some pecuniary loss to the respondent, in the sense that he may have taken away some of his sub-agents or collectors, but so long as this was only a consequence of an effort made by him to protect his own interests, one cannot presume from this, that the action of appellant was malicious. As a matter of fact, no attempt is made by appellant to pass over in silence the continued existence of the respondent in the business. He is referred to in the letter in such a context as to leave no doubt to those to whom the letter was addressed—and who all had the same necessary background of knowledge—that respondent was at least of equivalent standing as appellant ; otherwise it would not have been possible for respondent to have retained for his own use only the services of the previously common Limassol District agent, as stated in the said letter.

Looking at the letter in question as a whole, one could possibly say that it was not presenting a very clear picture, but on the other hand, one cannot at all say that it was a malicious attempt to distort matters to the detriment of the respondent.

As appellant has succeeded on this ground of absence of evidence of malice, the judgment of the Court below has to be set aside and the appeal allowed. It is not necessary to go into any other issues.

In the circumstances of this case, each party should bear its own costs, both in the trial Court and here before us.

VASSILIADES, J. : I concur with the judgment just delivered by Mr. Justice Triantafyllides, but I should like to touch one or two matters which occur to me. It is obvious, I think, at this stage, that this action is the result of the very strained relations which existed between the parties at the material time. The same strained and un-

friendly relations which caused considerable difficulty at the trial where the appellant conducted his own case in person, in a manner exhibiting considerable ill-feeling which may, probably, have led the trial Court to the conclusion that there was malice in the letter complained of. The strong feeling governing the attitude of the litigants at the trial, which obviously caused considerable difficulty to the Court, affected, in my opinion, their decision on the issue of malice.

But if the case be taken out of the thick smoke of feeling prevailing at the trial—which, with the assistance of counsel, could well be done here—the position appears clearly, in my opinion. It can be seen in the first part of the judgment, where very rightly, the trial Court connects this case with the fact that for some years before July 1961, when *exhibit* 3 was written, the plaintiff was the sole agent of Littlewoods Pools and the defendant was the sole agent of the Sherman Pools. That is an important factor in the present case.

In July, 1961, the position changed. Littlewoods bought Shermans, according to the evidence, and sent their representatives to Cyprus to make the necessary adjustment and arrangements here. They saw the respondent who was until then the main Littlewoods agent ; and they also saw the appellant, and another person, who were the two Sherman's main agents. They appointed them, all three now, to be, severally, Littlewoods main agents in Cyprus, with equal standing *vis-a-vis* the principals.

A short time later, the trial Court say, on the 15th August 1961, the defendant addressed the circular letter in question to some of his former sub-agents in the Shermans business in Cyprus ; some of these, sub-agents were at the same time the plaintiff's sub-agents in the Littlewoods business. In consequence of that letter, the plaintiff has instituted the present action. If this case is put in that back-ground, and if it is borne in mind that this letter was addressed to persons who as sub-agents were in the picture and knew the position, the matter is very different to what it would have been if this circular letter were addressed to people who did not know the position.

The trial Court found that in consequence of *exhibit* 3, which contained a falsehood—they thought—concerning his business, the plaintiff suffered pecuniary damage. The falsehood which the trial Court found consists in that the appellant represented himself as the sole agent of Little-

woods. With all respect I have for the learned judges who heard the case, reading *exhibit* 3 does not give me the impression that the defendant was representing himself as *the sole agent.* On the top of his letter he describes himself as " Littlewoods agent " ; and not " the agent ". He writes to people who knew that until the amalgamation of the agencies he was the agent of Sherman; and he begins his letter by saying :

> «Ὡς γνωρίζετε ὁ LITTLEWOODS ἠγόρασε τοὺς Σιέρμανς καὶ τώρα τὸ κουπόνι Σιέρμανς ἔπαυσε νὰ ἐκδίδεται ἀλλὰ συμπεριλαμβάνεται εἰς τό κουπόνι τῶν LITTLEWOODS. Οἱ Διευθυνταὶ τοῦ οἴκου LITTLEWOODS οἵτινες μᾶς ἐπεσκέφθησαν πρὸ μηνός, ἀναγνωρίσαντες τὴν τιμίαν καὶ σημαντικὴν ἐργασίαν τοῦ γραφείου μου, μὲ ἐδιώρισαν ὡς Κύριον Ἀντιπρόσωπόν των.»

As I have already said, if this exhibit is read in the background in which this case developed, as set out in the judgment of the trial Court, one cannot, I think, reach the conclusion that the defendant represented himself as being now the sole agent of Littlewoods, to the exclusion of the plaintiff. On the contrary, as pointed out by learned counsel in the course of the argument, in this very letter, *exhibit* 3, the appellant makes specific reference to the plaintiff in a way which can leave no doubt to the kind of a person to whom the letter is addressed that the plaintiff continues to be very much in business.

On this basis, the falsehood upon which the whole claim rests, is no longer there ; and on that ground I am of the opinion that the claim could not be sustained.

As regards costs, I am in full agreement with the view taken by the other members of the Court that this being a border-line case which developed in the circumstances set out in the judgment there should be no order for costs either in the action or in the appeal.

In the result the appeal must succeed ; the judgment of the trial Court be set aside ; the action of the plaintiff be dismissed, with no order as to costs here or in the trial Court.

JOSEPHIDES, J. : I agree and I will add only a few words. Even on the assumption that the statement made by the appellant (defendant) in the circular letter to his former sub-agents, read in its context, could be taken to mean that he was the sole agent of Littlewoods in Cyprus (and not one of the main agents), which would be untrue, I do

not think that the respondent-plaintiff has discharged the onus cast on him of proving malice on the part of the appellant ; and proof of actual malice is a necessary ingredient to sustain an action of injurious falsehood under the provisions of section 25 of our Civil Wrongs Law, Cap. 148.

Malice is an intent to injure the plaintiff. As Lord Coleridge C. J. said in *Halsey* v. *Brotherhood* (1881) 19 Ch. D. 386 at pages 388, 389 :

> " There must be some evidence either from the nature of the statement itself or otherwise, to satisfy the Court or the jury that the statement was not only untrue, but was made *mala fide* for the purposes of injuring the plaintiff, and not for the *bona fide* defence of the defendant's own property."

See also *Wren* v. *Weild* (1869) L.R. 4 Q.B. 730.

In the present case it would appear that the appellant made the statement for the protection of his interests and not with intent to injure the respondent, and the action cannot therefore be sustained, but I should add that this is a border-line case.

In the result I agree that the appeal should be allowed and that, in the circumstances of this case, each party should bear its own costs throughout.

Appeal allowed. Judgment of the Court below set aside. Action of the plaintiff dismissed. No order as to costs here or in the Court below.