

1955  
March 5

VARKES  
BASMADJIAN

v.  
LOIZOS G.  
MARANGOS

[GRIFFITH WILLIAMS, J. and ZEKIA, J.]  
(March 8, 1955)

VARKES BASMADJIAN of Famagusta, *Appellant*,

v.

LOIZOS G. MARANGOS of Famagusta, *Respondent*.  
(*Civil Appeal No. 4123*)

*Tort—Libel—Measure of damages.*

M. stated in a letter to B.'s employer that B. was inefficient and should be dismissed; and that B. had corruptly asked M. for £20. The Court held that M.'s allegation regarding the £20 was untrue and M.'s letter was a malicious libel. Throughout the trial M. continued to affirm the truth of his allegation. B. was awarded £5 damages.

*Held on appeal by B. on the quantum of damages:*  
The award of £5 nominal damages bore little relation to the seriousness of the libel. Damages increased to £75.  
Appeal allowed.

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Appeal from the judgment of the District Court of Famagusta (Action No. 1096/53).

*M. Montanios* for the appellant.

*N. Zannetides* for the respondent.

The facts sufficiently appear in the judgment of this Court which was delivered by:

GRIFFITH WILLIAMS J.: This is an appeal by the plaintiff against the amount of damages awarded him by the District Court of Famagusta in an action for libel.

The facts as found by the District Court are shortly as follows: The appellant was in the employment of one Jacob Mouchly, the owner of an orange grove in Famagusta, as his manager. The respondent was an electrical and mechanical engineer, who had his business at the time at Famagusta, and was the man employed from time to time to repair and supervise the engines and plant used for the purposes of watering the grove.

In March 1952 the owner of the orange grove went to America and remained there until November. During his absence the appellant was in complete charge of the orange grove and as such had authority to dismiss the staff and employ workers that might be necessary to keep the engine and plant in proper working condition. While he was in America during June and July the engines went wrong and the appellant, finding that he was unable to get them promptly attended to by the respondent, called in another mechanic to repair them. When they were already repaired the respondent sent a man to the orange grove for the purpose of repairing the engines, and was informed that, as the engines were running, the services of the respondent were no longer needed. After this a difference

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arose between the appellant and the respondent; the respondent wrote to the appellant a letter (Exhibit 1 B) dated the 18th July, 1952, questioning his authority to employ anyone but himself for the maintenance and repair of the engines and generally of the mechanical and electrical works of the grove, and also asking for the address of Mr. Mouchly. The appellant replied to this letter on the 25th July, 1952 saying that he was engaged to manage the grove during Mr. Mouchly's absence and that as manager it was his responsibility to see that the work of the garden was carried out efficiently and all the electrical and mechanical equipment was in good condition; that in his opinion the respondent, by not carrying out his maintenance work satisfactorily, was thereby making the carrying on of the grove more difficult, and that, as manager, he had full authority to engage whomsoever he considered capable of maintaining the engines in good running order.

As a result of this quarrel the respondent on the 27th July wrote a letter to Mr. Mouchly in New York, which letter contained the libel complained of. This letter, in fact, never reached Mr. Mouchly in New York and was returned to the sender, the respondent, who himself handed it unopened to Mr. Mouchly in November, 1952, after his return to Cyprus. The respondent sent copy of this letter to the appellant.

Now there is no need to set out the libel in full; it is sufficient for the purposes of this judgment to state that the respondent suggested in that letter that the appellant was inefficient, and was not carrying out his duty properly and that as a result his inefficiency would cause loss to Mr. Mouchly. It also suggested that the only remedy was to dismiss the appellant and put someone else in his place.

The District Court held that the letter was (1) untrue and written because the appellant discontinued employing the respondent for work on the grove; (2) that the object of the letter was to represent to the employer that plaintiff's management of his grove was inefficient; that there was trouble on the grove which was likely to result in damage to the employer; and that the latter should try to replace the plaintiff by some other manager, if he wanted to protect himself against considerable loss.

Apart from the libel set out in the Statement of Claim, the letter also contained an allegation that the appellant had asked the respondent for £20, which allegation the employer, as also the District Court, entirely disbelieved.

Having found that the letter was a malicious libel, the Court saying that it found considerable difficulty in assessing the amount of damages awarded the appellant the sum of £5 only. From the quantum of damage the

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plaintiff appeals. In its judgment the District Court states:—

“The amount to be awarded has given us considerable difficulty, as we do not think that plaintiff should be allowed to exploit this case for money. The object of a libel action should be to vindicate the character of the plaintiff, and not to punish the defendant.”

This statement is rather difficult to understand in view of the fact that the Court had already found a malicious libel. The suggestion that the plaintiff wanted “to exploit the case for money” would have some point if the libel were accidental, the result of mere ignorance, and the plaintiff were pressing for heavy damages. The further statement in the judgment that “the object of a libel action should be to vindicate the character of the plaintiff, and not to punish the defendant” is not in accordance with the English decisions.

The appropriate remedy for a malicious libel such as this is substantial damages. This Court in the case of *Cacoyannis v. Papadopoulos* (XVIII C.L.R. 205) raised the amount of damages awarded a successful plaintiff from £100 to £1000 because it considered that the award had been made on a wrong principle, the assessment of the damages being too low in relation to the seriousness of the libel. In that case it was argued for the respondent that the plaintiff went to Court merely to vindicate his character, and no doubt that was one of his motives, but it did not prevent this Court from awarding him substantial damages. In the case before us we can see no reason whatsoever for the award of mere nominal damages.

On the assessment of damages the Law as stated in *Halsbury 2nd Edition Vol. 20 at p. 507* is as follows:

“In actions of libel, etc. it is not necessary for the plaintiff to allege in his Statement of Claim that he has suffered actual damage. If, however, in such action he wishes to recover special damage, he must allege and prove it. If he fails to prove special damage he still has the right to resort to and recover general damages. For the law presumes that the publication of a libel.....has of itself a natural and necessary tendency to injure the plaintiff. Special damage is not the gist of those actions but a consequence only of this right of action, and though the plaintiff offers no evidence of actual damage the jury are not obliged to award nominal damages only”.

In the case of *Bray v. Ford*, 1896 A.C., p. 44, Watson, L.J. at page 50 states: “In such a case the assessment of damages does not depend upon any definite legal rule, and is the peculiar function of the jury” etc. *Herschell, L.J.*, in the same case states at p. 52:

“But in the case of an action for libel, not only have the parties a right to trial by jury, but the

assessment of damages is peculiarly within the province of that tribunal. The damages cannot be measured by any standard known to the law; they must be determined by a consideration of all the circumstances of the case, viewed in the light of the law applicable to them."

The matter of assessment of damages for libel is treated in *Gatley on Libel and Slander*, 4th Edition, at page 647:

"They (the jury) are entitled to take into account the conduct of the Plaintiff, his position and standing, the nature of the libel, the mode and extent of publication, the absence 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" etc.

On the question of assessment of damages for defamation *Mayne on Damages* states at page 501: "One of the principal elements in estimating the damages is the malice of the defendant"—and at page 502: "the fact that the defendant has persisted in the accusation and refused to apologize, and that he has put a plea of justification on the record which he does not abandon at the trial, though he does not attempt to prove it, may be taken into consideration as evidence of malice to heighten the damage".

The subject of punitive damage is considered in *Mayne* at page 41 as follows:—

"In cases of contract...damages are only a compensation. In cases of tort to property, where there are no circumstances of aggravation, they are generally the same... Where, however, the injury is to the person, or character or feelings, and the facts disclose fraud, malice, violence, cruelty or the like they operate as a punishment, for the benefit of the community, and as a restraint to the transgressor".

Most cases of libel in England are tried with a jury; but the principles applicable to the assessment of damage are the same where the trial is by a judge alone, or, as in this case, by two judges. In *Bull v. Vazquez* (1947 1 All E.R. 334) Lord Green, M.R., said: "It cannot be suggested that a judge sitting alone is in some way disentitled from awarding heavy damages because he is able (unlike a jury) in his spoken judgment to express his opinion of the seriousness of a libel and to say what he thinks of the conduct of the person uttering it" (1947 L.J.R. 531). Further, "the jury may take into consideration the whole defamatory document even though only part of it is set out in the Statement of Claim", per Gaselee, J., in *Blackburn v. Blackburn* (1827) 3 C. & P. at 158, E. R. 362 at 368.

In this case there was no jury, but the two judges acting as a jury found that the libel was malicious. They also found that the statement contained in the same letter that the plaintiff had asked the defendant for £20 was untrue. The conduct of the defendant before and after action brought was to persist in maintaining the truth of the libel, and even in Court he continued his allegation that the plaintiff asked him for £20. There was therefore not only a complete absence of any retraction of the libel or of any apology, but a persistence in affirming the truth of the words in the letter although the Court found it untrue and a malicious libel.

It was laid down in *Flint v. Lovell* (1935), 1 K.B., 354, by Greer, L.J., that the Court of Appeal will not reverse the decision of the trial Judge on the question of the amount of damages unless it is satisfied either that the judge acted on some wrong principle of law or that the amount awarded was so extremely large or so very small as to make it an entirely erroneous estimate of damage. That principle was held to be applicable to actions for libel. Asquith L.J. in *Bull v. Vazquez*, 1947, L.J.R., at 551, at page 553 states:—

“The appellant complains that the damages awarded are excessive. It is clear that the sum of £1000 contains a very strong punitive or exemplary element, and, therefore, it is not conclusive to point out that the slander was only published to two people, neither of whom believed it or acted upon it. The reason why this substantial figure was arrived at was clearly that the judge thought this was a peculiarly wicked slander, and in that opinion I personally concur.”

He then went on to speak of the decision of Greer, L.J., in the case of *Flint v. Lovell*. The Court upheld the award of damages, refusing to consider them excessive.

We feel that in the circumstances of this case the award of £5 nominal damages bears little relation to the seriousness of the libel, particularly in view of the conduct of the respondent already referred to. We also consider that the assessment was made on a wrong principle, as hereinbefore stated. In our opinion substantial damages should be awarded which may be regarded to some extent as punitive. *We therefore allow this appeal, and increase the amount of damages from £5 to £75.*