TYSER, C.J. & BERTRAM, J. 1909 April 6

[TYSER, C.J. AND BERTRAM, J.]

REX
v.
HAFUZ HUSSEIN MAHMOUD.

CRIMINAL LAW — SLANDER — PUBLICATION — " MEETING " — " JEM'IYYET "— " PUBLICATION "—" NESHR "—CIVIL REMEDY FOR DEFAMATION—OTTOMAN PENAL CODE, ART. 213.

A gathering of four persons is capable of being regarded as a "*jem'iyyet*" within the meaning of Art. 213 of the Ottoman Penal Code, and a person who utters a slander in such a gathering may be convicted of committing defamation in a *jem'iyyet* under that article.

SEMBLE: In determining whether a particular gathering is a *jem'iyyet* within the meaning of the article the Court may take into account the likelihood of the persons in questions disseminating the slander and the intention of the accused that it should be disseminated.

The question, whether the communication of a letter to a single person constitutes a publication (*neshr*) within the meaning of the article, reserved.

Per BERTRAM, J.: It should not be considered as settled law that there is no civil remedy for defamation in Ottoman law.

A man, who on several occasions, both orally and in writing, had falsely imputed unchastity to a woman, on one occasion repeated the slander to a gathering consisting of two women of his own family and a midwife.

HELD: That he might be convicted of defamation under Art. 213.

This was an appeal from the District Court of Larnaca.

The Appellant was convicted of charges under Art. 213 of the Ottoman Penal Code, the first of making slanderous statements imputing unchastity to a Turkish lady, the second of writing libellous letters to the same effect.

The slanderous statements were in two instances made to isolated individuals, but in a third case they were made to a group of three persons, consisting of two women of the accused's family and a midwife.

The letters were two in number, written on separate occasions and were posted to members of the lady's family.

It appeared that some months previously the accused had written to the father of the lady in terms so florid as to suggest an unbalanced mind, demanding her hand in marriage.

Artemis for the Appellant. Even if we admit the fact alleged the case is not within the article. It is essential to a conviction for defamation under the article, whether by word of mouth or by writing, that the defamation should have a public character. If verbal, it must be uttered at a public assembly: if written, it must be posted in public or distributed. The word جمعيت (*jem'iyyet*) means " a meeting," that is to say, a public meeting, or a meeting, such as that of a committee, summoned for a special purpose. It is an abuse of language to apply it to a chance collection of three persons in a private house. See *In re Ali Bey Haji Hassan* (1893)

2 C.L.R. on p. 151. " To bring a person within the law in our opinion the slander must be uttered publicly, and not over a dinner table or in private conversation with friends, which might by some means be overheard."

Amirayan for the Crown. جمعيت (*jem'iyyet*) merely means " a collection of people." In Professor Naji's dictionary it is defined as meaning " a body composed of the coming together of several persons." With regard to the word translated " distribute "—(نشر *neshr*) its meaning in the same dictionary is given as, " to scatter, to disseminate, to disclose, to open." There is no reason why it should not be used of a communication to a single person. The word " publish " is so used in the English law of libel.

The Court dismissed the appeal.

Judgment. THE CHIEF JUSTICE: I see no reason to differ from the District Court.

There is evidently some one who for some reason or other has been spreading slanderous statements against this lady.

The first trouble was the letter written by the accused in which he demanded her as his wife. It was evidently written by a man under some mental excitement.

Subsequently letters of a disgusting character were sent to members of her family. It is difficult for the Court to say positively that they were written by the accused, but they were evidently the production of some person with an evil purpose, whose mind was not in its normal condition. Evidently some one was trying to spread abroad the vilest libels on this lady.

Apart however from these letters, witnesses prove that he went into a house and there in the presence of three persons referred to the letters and repeated the same disgusting accusation.

It is argued that as the words were uttered in a private house when only three persons were present no offence was committed. That argument however is not sound.

There can be no doubt that in one sense of the word this meeting of persons was a جمعيت (*jem'iyyet*). It was not a " mere family party." The persons present would naturally spread what they heard to other members of the family, and their friends. Among those persons was a midwife, and midwives are notorious gossips. In my opinion, if the accused had wished to spread these slanders abroad, he could not have chosen a more appropriate method for the purpose.

As to the question whether the sending of the letters would constitute an offence under the article, I do not express any opinion.

As to the *dictum* cited from the case *In re Ali Bey Haji Hassan* (1893) 2 C.L.R., 151, it is sufficient for me to say that the facts of this case are not within that *dictum*.

The appeal must therefore be dismissed with costs.

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BERTRAM, J.: I concur—though not without some hesitation.

There can be no doubt as to the source from which this article is derived. It is taken from the original Art. 367 of the French Penal Code, the terms of which are as follows:—

> " Sera coupable du délit de calomnie, celui qui soit dans des lieux ou réunions publics, soit dans un acte authentique at public, soit dans un écrit, imprimé ou non, qui aura eté affiché, vendu ou distribué, aura imputé à un individu quelconque des faits, qui, s'ils existaient, exposeraient celui contre lequel ils sont articulés à des poursuites criminelles ou correctionelles, ou même l'exposeraient seulement au mépris ou à la haine des citoyens."

It is no doubt highly probable that the Turkish legislator in adopting this article from the French Code intended also to adopt the principle on which it is based, namely, that (except in the special case of defamation of public functionaries), defamation should not be punishable as a crime unless it were committed in some public or formal manner or unless it was distributed broadcast, the person injured in all other cases being left to his civil remedy. In pursuance of this principle Art. 367 of the French Code required that in order to be criminally punishable verbal defamation should be uttered in a " réunion publique."

As a matter of fact however the Turkish legislator has not required that the slander shall be uttered at a public meeting but only at a meeting (جمعيت *jemi'yyet*). Now it is clear that *jemi'yyet* though it may mean a large concourse, may also be used in a more restricted sense. Whether or not a particular gathering of people is or is not a *jem'iyyet* must be a question of fact, and in the circumstances of this case I am not able to say that the meeting of these four persons was not capable of being so regarded.

It was incidentally said in the course of the argument that in this country there is no civil remedy for defamation. I trust that that proposition will not be accepted as settled law. It is based upon the theory that the Courts of Cyprus, in administering Ottoman law, cannot award damages for civil wrong, except in the special cases expressly provided for in the Mejellé, or by other legislation. I venture to doubt the soundness of that theory. It has never been adopted in any reported case, and in the case of *Chacalli* v. *Kallourena* (1895) 3 C.L.R., 246, there are *dicta* to the direct contrary.

As to whether the letters written in this case constituted a criminal offence, I reserve my opinion, and as the verbal defamation is sufficient to support the conviction, I agree that the appeal must be dismissed with costs.

Appeal dismissed.