

STEFIS A. STEPHANOU,

*Appellant-Plaintiff.*

v.

MICHAEL HJIEFTHYMIU AND OTHERS,

*Respondents-Defendants.*

—  
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STEPHANOU  
v.  
MICHAEL  
HJIEFTHYMIU  
AND OTHERS

( *Civil Appeal No. 5319*).

*Libel—Fair comment—Public interest—Publication concerning finding of antiquities by police—A matter of public interest—Defence of fair comment—Need to distinguish between fact and comment—Certain statements not actually proved to be true—Were comment*  
5 *—No malice which would have prevented such comments from being fair—First proviso to paragraph (b) of section 19 of the Civil Wrongs Law, Cap. 148.*

The appellant (plaintiff) filed a libel action against the respondents (defendants) in relation to a publication\* which  
10 appeared in "Apoyevmatini", an afternoon newspaper, on December 4, 1972. The said publication referred to the finding of antiquities by the police in the house of the appellant.

The trial Judge having upheld a defence of fair comment dismissed the action.

15 The appeal has been based on two main grounds as follows:-

- (a) That the trial Court erred in finding that the publication concerned related to a matter of public interest, and
- (b) That the defamatory statements contained in such  
20 publication did not amount only to comment, and that, in any case, if they were comment, such comment was not fair.

*Held.* (1) we unhesitatingly agree with the trial Judge that the publication in question related to a matter of public interest: the protection of the antiquities of our country and the campaign  
25 against the looting and smuggling of, or any illegal dealing in, such antiquities is, undoubtedly, a matter of public interest (see

\* Quoted in full at pp. 226-227 *post*.

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Article 23.1 of the Constitution and *London Artists Ltd. v. Littler* [1969] 2 All E.R. 193 at p. 198).

(2) We see no adequate reason for disagreeing with the finding of the trial Court that in so far as the publication complained of consisted of statements which were not actually proved to be true such statements were, in substance comment; and moreover, that there was nothing to show that there existed malice which would have prevented such comment from being fair. This is, indeed, a case which comes within the ambit of the first proviso to paragraph (b) of section 19 of the Civil Wrongs Law, Cap. 148. (See *London Artists* case, *supra* at pp. 201–202, Gatley on Libel and Slander, 7th ed. p. 295, para. 709; *O'Brien v. Salisbury* [1889] 54 J.P. 215 and *Slim and Others v. Daily Telegraph, Ltd. and Another* [1968] 1 All E.R. 497 at pp. 502–503).

*Appeal dismissed.*

Cases referred to:

*London Artists, Ltd. v. Littler* [1969] 2 All E.R. 193, at p. 198;

*O'Brien v. Salisbury* [1889] 54 J.P. 215 at p. 216;

*Slim and Others v. Daily Telegraph Ltd. and Another* [1968] 1 All E.R. 497 at pp. 502–503.

### Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Papadopoulos, S.D.J.) dated the 25th May, 1974, (Action No. 7448/72) whereby plaintiff's action for damages for a libel published in "Apoyevmatini", an afternoon newspaper, on December 4, 1972, was dismissed.

*E. Lemonaris* with *A. Georghiades*, for the appellant.

*G. J. Pelagias*, for the respondents.

*Cur. adv. vult.*

The judgment of the Court was delivered by:—

TRIANTAFYLIDIS, P.: This appeal arose out of a libel action which was filed by the appellant, as plaintiff, against the respondents, as defendants, in relation to a publication which appeared in "Apoyevmatini", an afternoon newspaper, on December 4, 1972.

The said publication reads as follows:

“ Εἰς τὴν οἰκίαν τοῦ Στ. Στεφάνου Δεκάδες ἀρχαίων ἀντικειμένων εὐρέθησαν χθὲς εἰς Ἀμμόχωστον καὶ κατεσχέθησαν.

Δεκάδες ἀρχαίων ἀντικειμένων, προερχομένων ὡς φαίνεται

ἀπὸ συληθέντας τάφους ἀνευρέθησαν χθὲς ἐντὸς οἰκίας εἰς τὴν  
Ἐμμόχωστον κατόπιν ἔρευνῶν τῆς Ἀστυνομίας.

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5 Συνολικῶς, ὡς ἀναφέρουν ἀστυνομικαὶ πηγαί, 116 ἀντικείμενα ἀρχαιολογικῆς ἀξίας καὶ κυρίως ἀγγεῖα, τὰ ὁποῖα ἤδη ἔξετάζονται ὑπὸ εἰδικῶν, ἀνευρέθησαν ἐντὸς τῆς οἰκίας τοῦ ἔξ Ἐμμόχωστου κ. Στέφῃ Στεφάνου.

10 Ἡ ἀστυνομία διενήργησε τὴν ἔρευναν κατόπιν δικαστικοῦ ἐντάλματος, πρὸς διακρίβωσιν ὠρισμένων πληροφοριῶν καὶ ἐν τῷ πλαισίῳ ἐκστρατείας τῆς πρὸς πάταξιν τῆς ἀρχαιοκαπηλείας.

Ἐρευνᾶται ἐν πάσῃ περιπτώσει κατὰ πόσον ὁ κ. Στέφῃς Στεφάνου διέθετεν εἰδικὴν ἄδειαν κατοχῆς ἀρχαίων ἀντικειμένων, ἄλλως θὰ προσαφθοῦν σχετικαὶ κατηγορίαι.”

15 (“ In the house of St. Stephanou tens of antiquities were found yesterday in Famagusta and were confiscated:

Tens of antiquities, coming as it appears from looted tombs, were found yesterday in a house in Famagusta after a police search.

20 In all, according to police sources, 116 pieces of archaeological value, mainly pottery, which are already being examined by experts, were found in the house of Mr. Stephis Stephanou of Famagusta.

25 The police carried out the search, on the strength of a judicial warrant, for the purpose of checking certain information and in the course of its campaign against illegal dealings in antiquities.

It is, in any case, being investigated whether Mr. Stephis Stephanou had a special permit for the possession of antiquities, and if not, appropriate charges will be brought.”)

30 The above publication was preceded by, and was based on, a Public Information Office police bulletin which was produced at the trial and it reads as follows:—

“ ANEYΡΕΣΙΣ ΑΡΧΑΙΩΝ ΑΝΤΙΚΕΙΜΕΝΩΝ

35 Τὴν ἑσπέραν τοῦ παρελθόντος Σαββάτου, ἄνδρες τῆς Ἀστυνομικῆς Διευθύνσεως Ἐμμόχωστου ἠρεύνησαν, δυνάμει δικαστικοῦ ἐντάλματος, τὴν οἰκίαν κατοικοῦ Ἐμμόχωστου καὶ

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ἀνεῦρον 116 πηλίνα ἀγγεία, τὰ ὅποια καὶ παρέλαβον. Ἡ ὑπόθεσις διερευνᾶται.”

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Last Saturday evening men of the Famagusta Police Division searched, on the strength of a judicial warrant, the house of a resident of Famagusta and found 116 pieces of pottery, which they seized. The matter is being investigated.”)

5

The learned trial Judge said the following in upholding a defence of fair comment, which was put forward by the respondents:—

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“ There is no doubt that the protection of our national antiquities and any campaign for the suppression of looting of ancient tombs is a matter of public interest. What remains to be examined is whether the comment was fair in its legal sense.

15

.....

From the evidence before me it appears that the Police by virtue of a judicial warrant searched the house of the plaintiff and found 116 pieces of antiquities which were not registered, and which antiquities were taken by the Police for further investigation and the plaintiff was formally charged by the Police.

20

These are true facts and it makes no difference if the warrant of search was issued for the search of stolen property in the house of the plaintiff and not for antiquities.

25

The defendants, however, commenting on the above true facts went a step further and published the passage complained of in a way involving the plaintiff with illegal looting of ancient tombs. But I cannot say that that passage was not warranted by the facts before them. I also find that the defendants were expressing their honest opinion and were not in any way motivated by malice. It is clear in my mind that the defendants' comment was based on such facts which warranted it and an honest man might *bona fide* hold the opinion expressed upon them.”

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This appeal has been based on two main grounds: First, that the trial Court erred in finding that the publication concerned related to a matter of public interest, and, secondly,

that the defamatory statements contained in such publication did not amount only to comment, and that, in any case, if they were comment, such comment was not fair.

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5 As regards the question whether the publication in question related to a matter of public interest, the trial Judge, as it appears from the parts of his judgment which we have already quoted, found that this was so, and we unhesitatingly agree with him on this point; the protection of the antiquities of our country and the campaign against the looting and smuggling of, or  
10 any illegal dealing in, such antiquities is, undoubtedly, a matter of public interest. In this respect it is, indeed, to be noted that by express provision in Article 23.1 of our Constitution the rights of the Republic in antiquities are safeguarded.

15 In *London Artists, Ltd. v. Littler*, [1969] 2 All E.R. 193, Lord Denning M.R. said (at p. 198):—

“ There is no definition in the books as to what is a matter of public interest. All we are given is a list of examples, coupled with the statement that it is for the Judge and not for the jury. I would not myself confine it within narrow  
20 limits. Whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on; or what may happen to them or to others; then it is a matter of public interest on which everyone is entitled to make fair comment.”

25 Concerning the issue of fair comment we do not for a moment lose sight of the fact that, as pointed out by Edmund Davies L.J. in the *London Artists* case, *supra* (at pp. 201–202), it is often difficult to distinguish between statements of fact, which may not be protected by the defence of fair comment if they are  
30 defamatory, and comment that may be so protected. In this respect it is useful to refer to Gatley on Libel and Slander, 7th ed., p. 295, para. 709, where it is stressed that in deciding whether a text is a statement of fact or comment the words concerned must be read in their context, because words which,  
35 if taken by themselves, might appear to be a positive allegation of fact, may be shown by their context to be a mere expression of opinion or argumentative inference; and at p. 296, para. 710, of Gatley, *supra*, there is reproduced the following passage from *O'Brien v. Salisbury*, [1889] 54 J.P. 215 (at p. 216):—

40 “ Comment may sometimes consist in the statement of a fact, and may be held to be comment if the fact so stated

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appears to be a deduction or conclusion come to by the speaker from other facts stated or referred to by him, or in the common knowledge of the person speaking and those to whom the words are addressed, and from which his conclusion can be reasonably inferred ..... If, although 5  
stated as a fact, it is preceded or accompanied by such other facts, and it can be reasonably based upon them, the words may be reasonably regarded as comment, and comment only, and if honest and fair, excusable; and whether it is to be regarded as a fact or comment is a 10  
question for the jury, to be determined by them upon all the circumstances of the case.”

As to whether a comment is fair reference may be made to *Slim and Others v. Daily Telegraph, Ltd. and Another*, [1968] 1 All E.R. 497, where Lord Denning M.R. said (at pp. 502–503):– 15

“ Even if the words did convey the imputation, by way of comment, that the plaintiffs’ conduct was dishonest, insincere or hypocritical, the defence of fair comment was still available.

I think that the correct approach is simply this: were 20  
these letters fair comment on a matter of public interest? The company, Vitamins, Ltd., claimed that they had a right of way for vehicles along Upper Mall. That was a matter of public interest. So also was the conduct of their officers in regard thereto. That is conceded. The defen- 25  
dants were, therefore, entitled to make any fair comment on it. The letters contained a recital of facts which were virtually undisputed. At any rate, no serious complaint was made about the facts. The complaints which counsel for the plaintiffs made were about the comments. In 30  
particular, he complained about the comments ‘Double Think’ and ‘cynical’ in the letter of Mar. 30, 1964; and of the comments ‘protestations of injured innocence’ and ‘How can Mr. Graves pretend to associate himself’ in the letter of Apr. 23, 1964. These comments are capable of 35  
various meanings. They may strike some readers in one way and others in another way. One person may read into them imputations of dishonesty, insincerity and hypocrisy (as the Judge did). Another person may only read into them imputations of inconsistency and want of 40  
candour (as I would). In considering a plea of fair comment, it is not correct to canvass all the various imputations

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5 which different readers may put on the words. The important think is to determine whether or not the writer was actuated by malice. If he was an honest man expressing his genuine opinion on a subject of public interest, then no matter that his words conveyed derogatory imputations; no matter that his opinion was wrong or exaggerated or prejudiced; and no matter that it was badly expressed so that other people read all sorts of innuendoes into it; nevertheless, he has a good defence of fair comment. 10 His honesty is the cardinal test. He must honestly express his real view. So long as he does this, he has nothing to fear, even though other people may read more into it, see *Turner* (otherwise *Robertson*) v. *Metro-Goldwyn-Mayer Pictures, Ltd.*<sup>1</sup>, per Lord Porter and *Silkin v. Beaverbrook Newspapers Ltd.*<sup>2</sup>, per Diplock, J. I stress this because the right of fair comment is one of the essential elements which go to make up our freedom of speech. We must ever maintain this right intact. It must not be whittled down by legal refinements. When a citizen is troubled by things going wrong, he should be free to 'write to the newspaper': and the newspaper should be free to publish his letter. It is often the only way to get things put right. The matter must, of course, be one of public interest. 20 The writer must get his facts right: and he must honestly state his real opinion. But that being done, both he and the newspaper should be clear of any liability. They should not be deterred by fear of libel actions."

Section 19 of our Civil Wrongs Law, Cap. 148, reads as follows:-

30 " 19. In an action for defamation it shall be a defence –  
(a) that the matter of which complaint was made was true:

35 Provided that where the defamatory matter contains two or more distinct charges against the plaintiff, a defence under this paragraph shall not fail by reason only that the truth of every charge is not proved, if the defamatory matter not proved to be true does not materially injure the plaintiff's reputation having regard to the truth of the remaining charges;

1. [1950] 1 All E.R. 449 at pp. 460, 461.

2. [1958] 2 All E.R. 516.

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(b) that the matter of which complaint was made was a fair comment on some matter of public interest:

Provided that where the defamatory matter consists partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is a fair comment having regard to such of the facts alleged or referred to in the defamatory matter complained of as are proved:

Provided further that a defence under this paragraph shall not succeed if the plaintiff proves that the publication was not made in good faith within the meaning of subsection (2) of section 21 of this Law;

(c) that the publication of the defamatory matter was privileged under sections 20 and 21 of this Law;

(d) that the defamation was unintentional under section 22 of this Law.”

With all the foregoing in mind we see no adequate reason for disagreeing with the finding of the trial Court that in so far as the publication complained of consisted of statements which were not actually proved to be true such statements were, in substance, comment; and, moreover, that there was nothing to show that there existed malice which would have prevented such comment from being fair. This is, indeed, a case which, in our opinion, comes within the ambit of the first proviso to paragraph (b) of section 19 of Cap. 148.

For all the above reasons this appeal fails and it is dismissed with costs.

*Appeal dismissed with costs.*