1978 February 17

[STAVRINIDES, L. LOIZOU, HADJIANASTASSIOU, JJ.]

GEORGE CONSTANTINIDES,

*Appellant-Plaintiff,*

*v.*

NICOLAOS KOUREAS,

*Respondent-Defendant.*

(*Civil Appeal No.* 5368).

*Damages—Libel—Matters relevant to assessment—Principles on which Court of Appeal interferes with awards of damages made by trial Courts—Libel contained in a letter—Published to one person only—Untrue imputations of a criminal nature against lawyer of many years standing—More importance given to age of defendant and no sufficient importance to fact that, although offer of amends was made, plaintiff was cross-examined at length in a manner not justified by nature of the case—Trial court acted on wrong principle of law—Award of* C£100 *so extremely low as to make it an entirely erroneous estimate of damages—Increased.*

*Costs—Discretion of trial Judge—To be exercised in a judicial manner—Libel action—Plaintiff successful—Deprived of full costs—Amount of costs awarded utterly inadequate—Increase of damages on appeal—Award of costs on the scale applicable to the amount of damages.*

*Libel—Damages.*

The appellant (plaintiff), who has been a practising advocate since 1951, was acting on behalf of a certain Loizos Voniatis in an action filed by the latter against the respondent (defendant) in these proceedings. While this action was still pending the respondent addressed a letter* to the said Voniatis accusing him of theft, fraud and perjury and intimating that he has been influenced by the appellant to commit those acts.

* See extracts of the letter at pp. 142-3 *post.*

After the service of the writ of summons the respondent withdrew the defamatory allegations and offered his sincere apology to the appellant; and though he subsequently filed an offer of amends, under s. 22 of the Civil Wrongs Law, Cap. 148, which was not accepted by the appellant, in the course of the trial he sought to cross-examine the appellant at length in a manner not justified by the nature of the case.

The trial Court found that the letter was defamatory of the appellant; and after taking into consideration the contents of the letter, the seriousness of the libels contained therein, the position of the parties in society, the age of the respondent and his conduct both before and during the trial and the fact that the libel was published to Voniatis alone, they held that this was not a case which called for the award of substantial damages and awarded the sum of C£100.- with C£30.- costs.

Plaintiff appealed both against the award of damages and the order as to costs:

*Held, allowing the appeal,* (1) this Court will not usually reverse the decision of the trial Court on the question of the amount of damages, unless 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; this principle is applicable to actions for libel and slander.

(2) The trial Court misdirected themselves by giving more importance to the age of the respondent and by not giving sufficient importance to the fact that although an offer of amends had been made earlier, the appellant was cross-examined at length in a manner not justified by the nature of the case; furthermore the trial Court misdirected themselves by holding that this was not a case which called for the award of substantial damages, despite the fact that the defamatory words contained untrue imputations of a criminal nature and against appellant's reputation as a lawyer, who has been practising for many years in all the Courts of the Island.

(3) Though the libel was published to one person, who apparently did not believe it, this was a wicked libel injuring the profession of the appellant. The trial Court has, therefore, acted on a wrong principle of Law and the amount awarded

was so extremely low as to make an entirely erroneous estimate of the damages. The proper amount of damages, having regard to the nature of the libel, is the sum of C£600.– (Cf. *Bull* v. *Vazquez* [1947] 1 All E.R. 334).

(4) Costs are within the discretion of the trial Court but this discretion has to be exercised in a judicial manner. The amount of C£30.– is utterly inadequate; the costs should be taxed on a scale between C£100.– – C£1000.–

*Appeal allowed.*

Cases referred to:

*Scott* v. *Sampson* [1882] 8 Q.B.D. 491 at p. 503;

*Sim* v. *Stretch* [1936] 52 T.L.R. 669 at p. 671;

*Morgan* v. *Odhams Press Ltd.*, [1971] 1 W.L.R. 1239 at p. 1253 (H.L.);

*English and Scottish Co-operative Properties Mortgage and Investment Society Ltd.*, v. *Odhams Press Ltd. and Another*, [1940] 1 All E.R. 1;

*Bull* v. *Vazquez*, [1947] 1 All E.R. p. 334.

**Appeal.**

Appeal by plaintiff against the judgment of the District Court of Nicosia (Demetriades, P.D.C. and Evangelides, Ag. D.J.) dated the 27th November, 1974, (Action No. 757/73) whereby he was awarded the sum of C£100.– damages for the alleged publication of a libel contained in a letter plus C£30.– costs.

*G. Ladas*, for the appellant.

*A. Emilianides and C. Adamides*, for the respondent.

*Cur. adv. vult.*

STAVRINIDES J.: We have announced our decision in this appeal, stating that we would give our reasons therefor later; those reasons will now be given by Mr. Justice Hadjianastassiou.

HADJIANASTASSIOU J.: This is an appeal against the decision of the Full District Court of Nicosia, dated November 27, 1974, in which the sum of C£100.– damages was awarded to the plaintiff, Mr. George Constantinides for the alleged publication of a libel contained in a letter, with C£30.– costs against the defendant, Mr. Nicolaos Koureas.

The appellant is a lawyer exercising his profession since 1951. When he started studying law, he was also an employee of the Land Registry Office and he has been given the nick-name of "Tappoudjis". The appellant was the advocate of a certain Loizos Voniatis of Strovolos and he has filed an action on behalf of his client in the District Court of Nicosia against the present respondent, Mr. Koureas, and his son. On January 11, 1973, whilst the earlier action was still pending, the respondent addressed a letter to Mr. Loizos Voniatis accusing him of theft, fraud and perjury, and he was telling him that he was influenced by a certain "tappoudjis" and "Dikolavos", who put him up to commit all those things.

The appellant, having been informed of the defamatory statements contained in that letter against him, brought the present action on December 20, 1973, claiming, *inter alia*, that the respondent meant and was understood to mean that the person who had advised Mr. Voniatis to commit all those crimes was the appellant himself.

We, therefore, propose quoting certain extracts from the said letter in order to show not only the anger of the writer against the plaintiff in the earlier case, but also that the accusations were meant to be against the present appellant. We read:-

" (1) 'Αργὰ εἶδες τώρα, ὅτι ὁ μόνος ἐκμεταλλευτὴς σου ποὺ σ' ἔσπρωξε νὰ κάμης ληστρικὴν ἀπάτην, ἦτο ὁ *δῆθεν* κτηματολογικὸς ὑπάλληλος, ποὺ σοῦ εἶπεν ἀντὶ νὰ δώσης 5 οἰκόπεδα μὲ τὸ ψευδόχαρτον, ποὺ θὰ φυλάξης, θὰ πάρης 25 οἰκόπεδα. Μάλιστα τὸ ψευδόχαρτο ποὺ δὲν ὑπέγραψες καὶ ὑπούλως τὸ ἔκρυψες.

(2) Ποιὸς σατανὰς σ' ἔσπρωξεν, *νὰ κάμης νέαν ψευδορκίαν*, γιὰ νὰ σὲ βουλιάξη στὴν ἀνομίαν, τὴν ἀχαριστίαν, ποιὸς ἄλλος ἀπὸ τὸν δῆθεν κτηματολογικὸν ὑπάλληλον, ποὺ ἐνῶ ἐγὼ..... κ.λ.π..

(3) Ἔδωσες 1,000 λίρες ἀπὸ τοῦ 1965, *γιὰ κατασκευὴ δρόμου* καὶ στὰ σχέδιά σου δὲν ζήτησες ἀπὸ τοῦ 1965 ἀπὸ τὸ Κτηματολόγιον, *οὔτε δρόμον, οὔτε νέα σχέδια* μέχρι τοῦ 1970, ποὺ βρέθηκεν ἕνας πιὸ μεγάλος ἀπατεώνας καὶ σ' ἔσπρωξεν στὴν ἀπάτην γιὰ νὰ σοῦ φάγη λεφτὰ καὶ σύ, ποὺ γιὰ μιὰν κόταν σκοτώνεις ἄνθρωπον ..... κ.λ.π..

(4) Νὰ δώσης ἐμπιστοσύνην στὸν ττατπουτζῆ τοῦ Κτηματολογίου, ὅστις σὰν Σατανᾶς σὲ σκανδάλισε νὰ κάμης ἐκβιασμὸν τοῦ προστάτου σου;

(5) Ποῖος ἄλλος, παρὰ ὁ Ττατπουτζῆς, σὲ δίδαξε νὰ κάμης τὴν ἀπάτην, τὴν ὁποίαν τὸ Δικαστήριον ἀντελήφθη καὶ σὲ κατεδίκασεν;

(6) Τρία χρόνια τώρα βάσανα ἐλπίζω πλέον, ὅτι ἔκοψα τὲς ἁμαρτίες μους καὶ μὲ τὴν σειράν των, ὅλοι θὰ πληρώσουν, γιὰ τὰ ἐγκλήματά των καὶ εἰδικῶς ὁ δικολάβος σου ποὺ σ' ἔσπρωξε νὰ πλήξης τὸν προστάτην σου."

("(1) You lately saw now that your only exploiter who pushed you into committing a high handed deceipt was the *so called* Land Registry Clerk who told you that instead of giving 5 building sites, with the false paper, which you will keep, you will take 25 building sites. Yes, the false paper which you did not sign and cunningly concealed.

(2) Which Satan pushed you into *committing a new purgery* in order to make you sink in lawlessness and ingratitude, who else than the *so called* Land Registry Clerk, whilst I ..... etc.

(3) You have since 1955 given £1,000 for the *construction of a road* and in your plans you have not since 1965 asked from the L.R.O. either for a *road or new plans* until 1970 when a bigger impostor was found who pushed you in to the deceipt in order to obtain your money by deception and you, who for one hen can kill a man ..... etc.

(4) You imposed confidence on the "tappoudji" (Land Registry Clerk) who like a satan tempted you to blackmail your protector?

(5) Who else than the "tappoudji" (Land Registry Clerk) has taught you to commit the deceipt which the Court perceived and condemned you?

(6) For three years I have been tortured and I hope that I have paid for my sins and every body's turn will come

to pay for his crimes and especially your advocate's clerk who pushed you into harming your protector").

It has been said in a number of cases that "the law recognizes in every man a right to have the estimation in which he stands in the opinion of others unaffected by false statements to his discredit"—per Cave J., in *Scott* v. *Sampson*, [1882] 8 Q.B.D. 491, at p. 503. Furthermore, it has been said that an imputation, which may tend to lower the plaintiff in the estimation of right-thinking members of society generally (*Sim* v. *Stretch*, [1936] 52 T.L.R. 669 at p. 671), to cut him off from society, or to expose him to hatred, contempt or ridicule is defamatory of him. An imputation may be defamatory whether or not it is believed by those to whom it is published: *Morgan* v. *Odhams Press Ltd.*, [1971] 1 W.L.R. 1239 (H.L.), at p. 1253. The same applies when the defamation injures his reputation in his office, profession or calling.

With this in mind we turn to the writ of summons and it appears that it was served on the respondent on February 6, 1973, and within a period of 12 days, *viz.*, on February 18, he addressed a letter to the appellant withdrawing every defamatory allegation contained in his letter addressed to Mr. Voniatis, and offering also his sincere apology. In fact counsel on behalf of the respondent on July 3, 1973, filed in Court under the provisions of s. 22 of the Civil Wrongs Law, Cap. 148, an offer of amends, putting forward that the defamation was "unintentional". It should be added that this section of ours is similar to s. 4 (1) of the English Defamation Act, 1952.

This statutory offer of amends for unintentional defamation was supported by an affidavit of the same date. On July 6, 1973, counsel on behalf of the appellant filed in Court a notice under the provisions of s. 22 of Cap. 148, making it quite clear that the offer was not accepted and requested the respondent to proceed as soon as possible with his defence under subsections 1 (b), 2 and 5 of the said s. 22. On July 6, 1973, the defence was filed and it appears that the respondent denied that "he wrote or published the words complained of, of the plaintiff in the way of his alleged profession or in relation to his conduct, or otherwise as being in any way related or connected with him". Furthermore, the defence went as far as to state that

the said words were not reasonably capable of being understood to refer to the plaintiff.

At the hearing of this case quite rightly, in our view, counsel for the appellant interrupted the cross-examination of counsel for the respondent, because once an offer of amends for unintentional defamation was given, counsel was not entitled to use any other procedure to prove anything else than circumstances showing that the defamatory matter was published innocently. It has been said that for the purposes of this statutory offer words must be treated as published by the publisher innocently in relation to another person if, and only if, certain conditions are satisfied, that is, (1) that the publisher did not intend to publish the words of and concerning that other person, and did not know of circumstances by which they might be understood to refer to him; or (2) that the words were not defamatory on the face of them, and the publisher did not know of circumstances by which they might be understood to be defamatory of that other person, and in either case the publisher exercised all reasonable care in relation to the publication. This is indeed the meaning of an innocent publication.

The trial Court in fact made a finding that the defence under s. 22 of Cap. 148 failed and went on to add that they did not have to decide whether in law the defendant was entitled to put as an alternative defence, a defence under s. 22 *viz.*, that of an offer of amends, once he had put in as a defence that the defamatory allegations could not reasonably be understood as referring to the plaintiff.

The trial Court, having weighed carefully the whole evidence before it, believed the evidence of the plaintiff and his witnesses and rejected that of the defendant. The Court believed that the plaintiff was known as "tappoudjis" and that the defendant wrote the said letter knowing that the plaintiff was known under that nickname. Then the trial Court said "that the defendant meant the plaintiff as the person whom he called 'so-called lands clerk, tappoudjis and dikolavos' and that he knew that Voniatis would understand the plaintiff as the person who was so described in his letter and we also find that Voniatis understood the plaintiff. That is why on receiving this letter, he immediately gave it to him. We find also that the defendant

wrote that letter at a moment of anger and that he did not refer to Mr. Constantinides by his name not because he had in mind to find some kind of excuse if Mr. Constantinides complained later on but because he wanted to belittle Mr. Constantinides.....".

Finally, in dealing with the question of damages for the defamatory publication contained in that letter, the Court awarded the sum of C£100.- with C£30.- costs and had this to say:-

> " We take into consideration the contents of the letter, *exhibit No.* 1, the seriousness of the libels contained therein, their falseness and the circumstances attending the publication to Voniatis and the position of the parties in society. We, however, take into account the conduct of the defendant who, immediately upon receiving the writ of summons of this action, wrote to the plaintiff, Voniatis and plaintiff's counsel apologizing for the contents of the letter, *exhibit No.* 1, and his conduct at the trial. We also take into consideration the age of the defendant.
>
> Considering all the above and that the libel was published to Voniatis alone and that the contents of the letter, *exhibit No.* 1, did not in any way affect the reputation of the plaintiff or the feelings and respect of Voniatis for the plaintiff, we find that this is not a case which calls for the award of substantial damages."

Counsel for the appellant in his able argument before this Court was complaining that the finding of the trial Court that this was not a case which called for the award of substantial damages was erroneous in law having regard to those imputations published against the appellant; and that the assessment of damages of C£100.- was made on a wrong principle of law—being such an erroneous estimate of appellant's damage as to justify the intervention of this Court. It has been said that the Court in assessing the damages is entitled to look at the whole conduct of the defendant from the time of publication down to the time they give their judgment. They may consider what his conduct has been before action, after action, and in Court during the trial: See *English and Scottish Co-operative Properties Mortgage and Investment Society, Ltd.* v. *Odhams*

*Press, Ltd. and Another*, [1940] 1 All E.R. 1. Indeed the trial Court, as we have said earlier, did take into consideration the conduct of the respondent until the time the judgment was delivered, his position and standing, the nature of the libel, the mode and extent of publication, but we agree with counsel for the appellant that they misdirected themselves by giving more importance to the age of the respondent and by not giving sufficient importance to the fact that although an offer of amends was made earlier, nevertheless, counsel for the respondent cross-examined the plaintiff at length in a manner not justified by the nature of the case.

Furthermore, we are of the view that the Court misdirected themselves that this was not a case which called for the award of substantial damages, despite the fact that the defamatory words contained untrue imputations of a criminal nature and against his reputation as a lawyer, who has been practising for many years in all the Courts of the Island.

We are aware, of course, that this Court will not usually reverse the decision of the trial Court 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. This principle was held in a number of cases to be applicable to actions for libel and also for slander.

It is true, of course, that one of the reasons why this amount was given as damages was also the fact that the defamatory publication was only published to one person who apparently did not believe it but, in our view, this was a wicked libel injuring the profession of the appellant and we have reached the conclusion that the trial Court acted on a wrong principle of law and that the amount of damages awarded was so extremely low as to make it an entirely erroneous estimate of the damages. We would, therefore, interfere and in these circumstances we think the proper amount of damages, having regard to the nature of the libel, is the sum of C£600.-. (Cf. *Bull* v. *Vazquez*, [1947] 1 All E.R. p. 334).

Turning now to the second complaint of counsel that the award of the amount of C£30.- costs, is tantamount in effect to

punishing the appellant for defending his lawful rights, we think we ought to reiterate what has been said in a number of cases that the costs are at the discretion of the trial Court but it has to be exercised in a judicial manner. In these circumstances, we find ourselves in agreement with counsel that the amount of C£30.– is utterly inadequate and we have decided that the proper amount should be taxed on a scale between C£100-C£1000.–.

We would, therefore, allow the appeal with costs in favour of the appellant on that scale.

*Appeal allowed with costs.*