

1986 January 22

[A. LOIZOU, DEMETRIADES, PIKIS, JJ.]

NICOS CONSTANTINIDES AND ANOTHER,

Appellants-Defendants,

v.

ERATOSTHENIS VASSILIOU,

Respondent-Plaintiff.

(Civil Appeal No. 6767).

5 *Defamation—Slander—Qualified privilege—Defence of—The Civil Wrongs Law, Cap. 148, s. 21(1)(a)—The privilege claimed should be specially pleaded in the defence—The facts giving rise to the privilege should be specifically averred to in the defence unless clearly disclosed in the statement of claim.*

Civil Procedure—Pleadings—Action for slander—Defence of qualified privilege: See above under Defamation.

10 The appellants and the respondent are members of the village community of Ikos in Marathasa area. The appellants named the respondent to the Police as the suspect of the theft of their scaffolding, which as it was subsequently turned out had been taken by a third party, who removed it, presuming the appellants' consent. Moreover,
15 the appellants freely accused the respondent before a number of their co-villagers of being a thief responsible for the theft of the said scaffolding.

20 As a result the respondent brought an action for damage for slander. The trial Judge accepted the evidence of the plaintiff and his witnesses and adjudged the defendants to pay £300.- damages.

25 Hence the present appeal. In a passage in the judgment specific reference is made to the complaint made by the appellants to the police constable in the presence of the Mukhtar of the village. Counsel for the appellants con-

strued the verdict as confined to the words spoken on the above occasion and invited the Court to set aside the judgment on the ground that such statement to the police constable was covered by qualified privilege.

Held, dismissing the appeal: (1) The trial Judge did not confine his verdict to the above statement, but accepted the plaintiff's evidence in its totality as well as the evidence of a number of witnesses who testified as to the appellants utterances of their accusations against the respondents before a number of their co-villagers.

(2) The defence of qualified privilege is not open to the appellants as it had not been specially pleaded in their defence. Not only express reference must be made in the defence to the privilege claimed, but also the facts giving rise to it must be specifically averred, unless clearly disclosed in the statement of claim.

(3) The rules of pleading are bound up not only with procedural requirements, but with more fundamental precepts of justice too, fairness in particular. especially the need to afford an adversary an opportunity to answer the case of his opponent.

Appeal dismissed with costs.

Cases referred to:

Loucaides v. C.D. Hay and Sons Ltd. (1971) 1 C.L.R. 134;

G.I.P. Constuctions v. Neophytou and Another (1983) 1 C.L.R. 669;

Farrel v. Secretary of State [1980] 1 All E.R. 168.

Appeal.

Appeal by defendants against the judgment of the District Court of Nicosia (N. Nicolaou, D. J.) dated the 12th May, 1984 (Action No. 1449/83) whereby they were adjudged to pay to the plaintiff the sum of £300.- for slander.

Chr. Kitromilides with *E. Mitsingas*, for the appellants.

M. Charalambides, for the respondent.

Cur. adv. vult.

A. LOIZOU J.: The judgment of the Court will be given by Pikis, J.

5 PIKIS J.: The appellants and respondent, defendants and plaintiff respectively at the trial, are members of the village community of Ikos in the Marathasa area. Their relations were disturbed in the upsurge following the disappearance of a piece of scaffolding of the appellants from their foreyard where it was stored. As it subsequently turned out a third party, a co-villager of them, removed it
10 without forewarning, for temporary use, presuming their consent. Before this fact was revealed a series of events occurred that gave rise to the present proceedings.

15 Appellants' suspicion for the loss of their scaffolding turned on the respondent whom they named to the Police as the suspect of the theft. Moreover, they freely accused him before a number of their co-villagers of being a thief responsible for the theft of their property. The charge and its circulation in the small community they live, caused him, as the respondent alleged before the trial Court, apart
20 from considerable embarrassment, grave financial loss too. Being a builder he relied on the custom of his co-villagers for the earning of his livelihood. Following the slanderous allegations of the appellants his services as a builder were discontinued in one case, whereas other fellow
25 villagers with building work at their disposal, on whose custom he could predictably rely, refused to employ him.

30 Appellants, husband and wife, denied that they slandered respondent in any way. The only reference they admitted making to the person of the respondent was to name him as a suspect to the police constable who took up investigations following the disappearance of their scaffolding in the presence of the mukhtar of the village who accompanied him on his inquiries.

35 The trial Judge accepted the case for the respondent finding him and the witnesses who testified in support of his case to be both truthful and reliable. In a passage of the judgment specific reference is made to the complaint made by the appellants to the police constable in the presence of the mukhtar disclosing their suspicions that

respondent was the culprit of the alleged theft. The emphasis laid in the judgment on this aspect of the case led counsel for the appellants to construe the verdict of the Court as confined to the words spoken on the above occasion. And relying on this construction of the judgment of the Court, counsel submitted that the statement made to the police constable in the presence of the mukhtar was covered by qualified privilege and as such provided the appellants with a valid defence. Resting his appeal primarily on this premise, he invited us to set aside the finding of the Court that appellants were answerable to the respondent for slander and liable to pay on that account £300.- damages.

In the first place, careful reading of the judgment establishes that the Judge did not confine his pertinent findings to the above statement. He concluded as plainly stated in the judgment, that the evidence for the plaintiff was accepted in its totality, including evidence of a number of witnesses who testified that appellants uttered their accusations before a number of their co-villagers affirming their conviction that respondent was a thief, responsible for the theft of their property. There is no suggestion that these statements attracted any colour of privilege.

Further the defence of qualified privilege is not open to the appellants in the absence of a special plea to that effect in the defence. As counsel for the respondent pointed out, the defence of qualified privilege can only be invoked if specially pleaded. Not only express reference must be made in the defence to the privilege claimed but the facts giving rise to it must, unless clearly disclosed in the statement of claim, be specifically averred⁽¹⁾. Not only the appellants did not specifically raise the defence of qualified privilege but wholly denied slandering the respondent on any of the alleged occasions.

Qualified privilege is acknowledged as a valid defence to an action for defamation by s. 21 of the Civil Wrongs Law, Cap. 148. The very nature of the defence dependent

⁽¹⁾ The subject of qualified privilege and the need for special pleading are discussed in Bullen and Leak and Jacob's «Precedents on Pleadings», 12th Ed., p. 1173-1174 and Gatley on Libel and Slander, 8th Ed., para. 1127.

- on the relationship between the maker of a statement and the recipient of it and the context in which it is made, requires that it should be specially pleaded. The defence of qualified privilege under s. 21(1)(a), relevant in the context of these proceedings, is only available if there is a legal or moral duty on the part of the maker to make the statement and a corresponding interest on the part of the recipient to receive it. Provided always, as the proviso thereto acknowledges, the publication is not excessive either as to its content or extent. The circumstances of publication and the content of it are facts peculiarly in the knowledge of the defendant, who is consequently required by rules of pleading to raise the defence of qualified privilege specifically if he intends to rely on it. Rules of pleading are, as Courts in England and Cyprus often affirmed, bound up not only with proper procedural requirements but with more fundamental precepts of justice too; fairness in particular, especially the need to afford an adversary an opportunity to answer the case of his opponent⁽¹⁾.
- For the above reasons the appeal fails. It is dismissed with costs.

Appeal dismissed with costs.

⁽¹⁾ See, inter alia, *Christakis Loucaides v. C. D. Hay & Sons Ltd* (1971) 1 C.L.R. 134; *G.I.P. Constructions v. Neophytou and Another* (1983) 1 C.L.R. 669; *Farrel v. Secretary of State* [1980] 1 All E.R. 168 (H.L.).