

25th. April, 1949.

Judge :

The Hon. Mr. Justice W. Harding, B.Litt., LL.D.

Slander — Appeal — "Animus Injuriandi" —

Art. 425 of the Criminal Code.

Charles Attard *versus* Douglas Allen

In an action for slander, there is no appeal for the plaintiff against a judgment of acquittal of the defendant by the First Court, if the acquittal was based on the ground that the Magistrate held that the evidence did not disclose the "animus injuriandi" in the defendant. If the Magistrate acquitted the defendant because he held that there was absence of "mens rea", there is no appeal for the complainant against that judgment.

This is an appeal from a judgment given by the Criminal Court of Magistrates for the Island of Malta on the 24th. day of March, 1949;

Charles Attard sued the defendant on the charge of grievous slander;

The Court below found defendant not guilty and acquitted him;

Complainant has now come before this Court, praying for the reversal of the judgment;

It is laid down by law (section 425 Chap. 12) that the complainant may appeal only in certain cases expressly specified in the section;

In this case the appeal appears to be based on sub-paragraph (iv) of para. (b) of subsection (1) of that section, and also on subsection (3) thereof;

As far as it is grounded on sub-paragraph (iv) the appeal is not tenable. In fact, under that provision, the complainant may appeal only in two cases: in the first place, if the Court below, without hearing any evidence, holds that the facts solely as set out in the summons, apart from any evidence, do not constitute an offence; in the second place, if the Court below, even though it shall have examined the evidence, applied to the facts a principle of law which it wrongly enunciated;

These principles are based on a long line of judicial precedents;

Now the Court below did examine the evidence. It did not quote any principle of law inconsistently. Indeed, the Court below held, quite properly, that slander requires the "*animus injuriandi*" as one of its ingredients; and on considering the evidence, that Court came to the conclusion, as a point of fact, that there was no "*animus injuriandi*" in the present instance;

What is involved is clearly, therefore, not a point of law, but a point of fact, that is, whether the evidence did or did not disclose the "*animus injuriandi*". The Magistrate held that it did not. His opinion on a point of fact, whether right or wrong, is not controllable on appeal;

The third subsection of section 425, on which the complainant is also relying, equally affords him no assistance. The judgment of the First Court, in point of fact, sets forth in detail the reasons for which the Magistrate came to the conclusion that there was no offence. It is perfectly clear that the Magis-

trate acquitted the defendant because he held that there was an absence of "mens rea";

The appeal, therefore, is not admissible, and as such it is hereby declared null and void;

The fees of counsel are fixed at 12s. for this only sitting.
