

18th, February, 1946.

Judges:

The Hon. Prof. E. Ganado, LL.D., *A/Pres.*

The Hon. L.A. Camilleri, LL.D.

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

The Hon. Albert V. Bartoli *versus* Albert J. Semini et.

**Libel — Editor — Civil Action and Criminal Proceedings —
Appeal — Cross-Appeal — Section 26, 31, 33 and 22
of the Press Ordinance (Chapter 117 Revised Edition)
and section 238 of the Code of Civil Procedure
(Ch. 15 Revised Edit.).**

The editor of a newspaper is liable to civil damages; because the civil claim may be brought against those persons as are liable to criminal proceedings, amongst whom is the editor.

A subsequent publication in the newspaper refuting the former allegations published in a previous issue of that newspaper does not constitute a bar to the exercise of an action under the Press Law. An apology inserted in the paper may operate in mitigation of damages, but does not discharge of the causes of action and damages.

The mere fact that the respondent did not enter a principal appeal does not deprive him of the right of cross-appeal. Moreover, when the principal appeal is restricted to one or more heads of the judgment, he may avail himself of the appeal in respect of all the heads as if the appeal had been entered from the whole judgment.

By writ-of-summons no. 416 of 1944, filed in the First Hall of His Majesty's Civil Court, plaintiff premised that in the issue of the newspaper "The Bulletin" of Saturday, the 12th. August, 1944 (no. 28, new series, 5995), in the third and fourth column of the second page thereof, the defendant Albert J. Semini wrote for publication, or wrote and consented to the publication, and the defendant Joseph J. Scorey published or permitted the publication, of an article signed by the defendant Semini, under the title of "Shelter Construction Accounts" (Exhibit "A"), containing facts and grave imputations which assail the character and the reputation of the

plaintiff, and expose him to the public hatred and contempt, and this by means of four libellous accusations, namely:—

1. The false and malicious imputation alleging the mercenary nature of the plaintiff's position as an elected member of the Council of Government of Malta, which imputation begins with the words "whenever I hear the name of Mr. Bartoli....." and ends with the words "representative of the people" in the first paragraph of the above mentioned article (exhibit "A");
2. The false and malicious imputation that the plaintiff had contributed his share towards rendering valueless the present Constitution of the Maltese people, which imputation begins with the words "to that extent....." and ends with the words "of a Constitution which we have", in the third paragraph of the article in question (exhibit "A");
3. The false and malicious imputation ascribing to the plaintiff, amongst other things, the present deterioration in moral standards, which imputation begins with the words "they have been too self-seeking....." and ends with the words "the deterioration in moral standards which afflicts today....." in the third paragraph of the article afore mentioned (exhibit "A");
4. The false and malicious imputation that the plaintiff in the discharge of his duties as an electoral member of the Council of Government had not revealed and had not given voice to the complaints of the public against the system adopted by the Civil Government of Malta for the payment of labourers employed in shelter construction, which imputation begins with the words "another point....." and ends with the words "thus opening the way for abuses....." in the sixth paragraph of the article under reference (exhibit "A"); that the words "I have thus said everything that is bad that has come to my mind of Mr. Bartoli", which are contained in the seventh paragraph of the article in question, direct, in a special manner, the third and fourth imputations against the plaintiff; and asked that defendants be condemned to pay to him a sum of money to be assessed by the Court in respect of each of the said four imputations, in such way that the total sum shall not exceed £400, by way of damages and reparation

for the moral injury and defamation sustained by plaintiff by the publication of each and all of the said imputations; with interest on such sum and with costs against defendants;

The First Court gave judgment on the 31st. October, 1945, wherein it allowed the claim only to the extent of the first part of the article in question, and condemned defendants to pay to plaintiff by way of damages £2 each, dismissing the claim as far as the rest of the article in question was concerned; the costs to be borne as to one-fourth by the plaintiff and the remaining three-fourths by the defendants;

In the course of its judgment the First Court held that the subsequent publication by defendant Scorey of plaintiff's letter did not bar the action; that the editor of a newspaper, being criminally liable for libel, is also liable to the civil action for damages which flows from the offence; that the first part of the article in question (that is, the imputation under no. 1 above) was defamatory in so far as it implied a charge against plaintiff of mercenariness during the most critical time of the war; and that the rest of the article was a criticism of plaintiff's political activities which contained nothing defamatory;

An appeal was entered against the judgment by defendant Scorey. Defendant Semini did not appeal. Plaintiff himself did not enter an appeal, but on the strength of defendant Scorey's appeal he availed himself of the provisions of law and entered a cross-appeal, wherein he asked that, with regard to the first part of the article, the damages should have been higher, and, with regard to the rest of the article, he contended that even as to that, defendant should also be condemned to pay damages as it was similarly libellous. In this way the whole question was brought before this Court;

This Court considers as follows;

With regard to the plea of this defendant, to the effect that, so far as the civil remedy is concerned, the law does not mention the editor of the newspaper, it does not seem that this point was very much pressed on appeal. It is as well to state, however, that from the provisions of the Press Ordinance (Chapter 117, Revised Edition) it is clear that the

civil claim may be brought against the same persons as are mentioned in section 26 in reference to criminal proceedings. Although section 31, under which the civil action is brought, does not mention who the defendants are or should be, section 33, which refers to the civil action, mentions the defendants in such action with the words "the persons concerned in the libel". It is obvious that the persons concerned in the libel are those referred to in section 26. If only the author was liable to the exercise of the civil action, there would be no point either in using the expression "persons concerned in the libel", nor in speaking of several defendants joined in the action, and section 33 would not then be properly understandable. This conclusion is in keeping with the principles laid down by English text-writers. Thus in Odgers, *On Libel and Slander*, Sixth edition, page 486, it is stated:—"Whenever more persons than one are concerned in the same publication, the plaintiff may sue all or any of them in the same action; thus, where the libel has appeared in a newspaper, he can always join as defendants in the same action the proprietor, the editor, the printer, and the publisher, or so many of them as he thinks fit";

(Counsel for the appellant Scorey did, however, press on appeal the other point which he appears to have also taken before the Court below, that the publication in the subsequent issue of the "Bulletin" of the letter of plaintiff refuting the allegations of the author, and of the author's apology, exempted the appellant from liability;

This point also fails. In fact, section 22 of the Ordinance deals with the publication of a similar statement, and in the fourth subsection thereof lays down unequivocally that the publication of such statement shall not be a bar to the exercise of any other action under the Ordinance. Here again the well-known principle is followed, that the insertion in the paper of a full apology at the earliest possible opportunity only operates in mitigation of damages (vide Odgers afore quoted, page 331, where the provisions of Lord Campbell's Act (6 and 7, Vict. ch. 96) are quoted). The case might have been

different if it had been in any way proved that there was a definite agreement between plaintiff and defendant that the publication of plaintiff's letter and of the other defendants' apology would be accepted in satisfaction and discharge of the causes of action and damages (vide Folkard, *The Law of Slander and Libel*, page 401). This, however, was not the case in the present instance, although it was undoubtedly to the appellant's credit that he immediately took steps to enable plaintiff to state his case. Evidently this was the stand-point taken by the First Court, who only awarded nominal damages;

Another important point taken by counsel for the principal appellant Scorey is the contention that, since the respondent did not enter an appeal against the co-defendant Semini in respect of the self-same libel, and since the judgment in regard to this other co-defendant had become absolute, the respondent was now barred from availing himself of the principal appeal by way of a cross-appeal to claim higher damages in respect of the first imputation and to claim a favourable judgment in respect of the other imputations which the First Court did not consider libellous;

The point certainly deserved being taken, but on a close examination it does not appear tenable at law;

Section 238 of the Code of Organisation and Civil Procedure — Ch. 15, Rev. Edit. — clearly lays down that when the appeal is restricted to one or more heads, as it is in this case, the respondent, who shall not have entered an appeal against any of the heads of the judgment, may avail himself of the appeal in respect of all the heads as if the appeal had been entered from the whole judgment. Moreover, the mere fact that respondent did not enter a principal appeal cannot operate so as to deprive him of the right of cross-appeal, firstly, because any such construction would neutralise the provision afore-quoted in section 238, which expressly refers to the respondent who shall not have entered an appeal against any of the heads of the judgment, and, secondly, because local case-law has construed as a waiver of appeal not the fact of no principal appeal having been entered at all, but the fact that

notice of appeal is given, and the relative note filed, and subsequently this is not followed up by the appeal petition (*vide* Appeal *Dr. Debono vs. Schembri*", 26th. February 1869, Law Reports Vol. V, page 43). In such case no cross-appeal is entertainable;

With regard to the merits;

As for the first imputation, this Court agrees with the First Court. In the article which appeared in defendant Scrorey's paper the incident regarding the offer of the post of Protection Officer to plaintiff, and his alleged reply thereto, is given out as an absolute fact. No mention is made of the explanations given by plaintiff in the Council of Government, nor of the remarks of Mr. Cameron, which, even if not a formal retraction, certainly toned down his previous statement to which plaintiff had taken exception. The facts are not truly stated; consequently there cannot be a fair comment;

In his cross-appeal the respondent complains of the smallness of the amount of damages with regard to this first imputation. This Court, however, considers that the publications made by defendant in the next following issue of his paper must be deemed to be a powerful factor in mitigation of damages, and consequently it does not feel that it should disturb the discretion of the First Court in this regard;

Respondent's cross-appeal also covers the remaining imputations. It has long been a well-settled principle that articles in the press dealing with political matters must be looked at from a broad point of view. It was Fitzgerald Y. in *R. v. Sullivan*, Irish St. Tr. 1868, 11, Cox, C.C. 53, who asked the jurors to recollect that they were dealing with political articles, for which a great latitude must be given, and who recommended that they should be looked at in a broad spirit, allowing a wide and fair margin. In the present case, in those other imputations there is no misrepresentation of the facts proper, as in the first imputation, but there is only, as the Court below correctly remarked, a criticism of plaintiff's political activities, even though the language may be considered strong and the statements unpalatable to plaintiff, al-

though the author of the article seems to have immediately regretted the tone of the article by switching over to an eulogium of plaintiff's political behaviour on other matters;

Omissis;

For the fore going reasons;

This Court disposes of the appeal as follows;

Dismisses the principal appeal with the costs thereof against the appellant;

Dismisses respondent's cross-appeal with the costs thereof against the respondent;

Affirms the judgment of the Court below with regard to both merit and costs, with this variation, however, that in the allocation of the costs, as ordered by the First Court, the costs of and incidental to the plea of urgency should be considered as being at the sole charge of the plaintiff, the allocation to apply to the rest of the costs.
