

2nd, October, 1944.

Judge :

The Hon. Mr. Justice T. Gounder, J.L.D.

The Hon. Alber. V. Bartoli versus Albert J. Semm, etc.

**Vacations — Hearing of Cases with Urgency —
Art. 138 of the Laws of Organisation and Civil Procedure.**

In the meaning of the law, a case is to be considered as urgent, and therefore as requiring to be heard owing to its nature even during vacation, only if the prejudice which one of the contending parties would suffer, if the case were not promptly heard and disposed of, would be incalculable.

The Court — On the application of the plaintiff for an order that the case be heard and disposed of in vacation as urgent :

Omissis;

Considering;

That art. 138 of the Laws of Organisation and Civil Procedure lays down that "No sittings shall be held during the vacations, except for cases the hearing of which, regard being had to the nature thereof, may be urgent, or the hearing of which may have commenced before the vacations and the parties have not applied for a postponement to a day subsequent to the last day of the said vacations, and except for appeals from decisions of the Court of Judicial Police for the Island of Malta and of the Court of Judicial Police for Gozo and Comino in its inferior jurisdiction. The Court may, however, whenever it deems it expedient, hold sittings for hearing and determining cases, if an application to that effect be made by both parties";

That the hearing of the present case did not commence before vacation, and, as the defendants are opposed to the plaintiff's request that the case be heard in vacation, the Court must be satisfied, to grant the request, that the case is such as requires to be immediately or promptly heard owing to its nature;

That the plaintiff has submitted two reasons why the hearing of the case should be considered as urgent, regard being had to the nature thereof. The first reason he draws from the fact that he is an elected member of the Council of Government, and as such he has a great interest to show that the statements made to his discredit are false and unfounded, thus promptly vindicating the estimation in which he stands in the opinion of others. The second reason he draws from the fact, alleged by him, that a general election may be shortly expected, in which case those statements will operate to his prejudice as a candidate for re-election;

Considering;

That the second motive must be put aside, as evidently there is no reason to believe so imminent the announcement of an election;

That as regards the first reason, in the meaning of the above-quoted provision of the law, a case is to be considered as requiring to be urgently heard owing to its nature, only if

the prejudice which any of the contending parties would suffer, if the case were not promptly heard and disposed of, would be irreparable:

That although the plaintiff has a great interest to prove immediately that the statements complained of are false, it cannot however be held, in the circumstances, that if the case is not immediately heard, he will suffer irreparable prejudice, that is to say, that it will be no more possible for him to restore himself to his original position as regards his character and reputation unaffected by the statements to his discredit. If plaintiff's allegation that the announcement of an election may be impending could be accepted, his right to the order would be obvious, but as afore stated, he failed to produce evidence to substantiate that allegation and, in the opinion of the Court, there is nothing to make one believe that that allegation may be correct;

For the foregoing reasons;

Revokes "contrario imperio" the above mentioned decree dated 13th. Septembr. 1944, and disallows the application; with costs;

The parties will be notified by means of a letter from the Registrar of the date on which the case will be heard.
