APPUHAMI *et al. v.* KIRIHAMI *et al.*

D. C., Kégalla, 474.

Slander—Action by parent and daughter for slander of daughter—Right of parent to sue—Proof of special damage.

A father cannot sue for damages for slander of his daughter, although he may have felt pained by such slander.

To say of a Sinhalese woman of the Vellala caste, in the presence and hearing of many persons assembled at a dinner party, that she had run away with a Wahumpura man is actionable as slander.

Proof of special damage is not necessary in Ceylon to sustain an action for slander.

THE first plaintiff was the father of the second. They alleged that they were Kandyan Sinhalese of the Vellala caste, that the second plaintiff was married out in diga to one Kiri Banda, and that "at a dinner at Pinnewela ....., at the house of one "Punchirala, on the 18th day of January, 1894, at which several "people were present, the defendants ..... falsely and mali-"ciously spoke, said, and published to the said Punchirala and "certain other persons there present at the aforesaid dinner, "the words following; that is to say, 'Your (meaning the first "plaintiff) daughter (meaning the second plaintiff) ran away with "a Wahumpura man,' meaning thereby that the first plaintiff "was degraded and disgraced by the act of the second plaintiff, "and that he was not a fit person to associate with; and also "meaning that the second plaintiff was guilty of acts of incon-"tinence and adultery and immorality, and had disgraced herself "with a low-caste man."

They further alleged that the said words were false and malicious, and that, "in consequence of these words, the first "plaintiff has been disgraced and degraded and was not allowed "to sit down at the dinner aforesaid or to associate with the other "guests; and the second plaintiff has been disgraced in character "and reputation, and has been turned out of her house by her "husband, the aforesaid Kiri Banda; and by reason of the premises, "the plaintiffs have suffered loss and damage to the extent of "Rs. 500."

The defendants took exception to the form of the plaint and its sufficiency in law, and pleaded, *inter alia*, that the words in question were spoken without malice, and in the *bonâ fide* belief that they were true and under such circumstances as made them a privileged communication; that is so say, that at a private dinner, being requested by his host to sit at the same table with the first plaintiff, the first defendant declined to do so, and being asked his

reason, he stated that "it was because first plaintiff's daughter had "run away with a Wahumpura man, a man of low caste, and "therefore his host placed first plaintiff and first defendant at "separate tables." The second defendant denied having ever spoken the words complained of.

The District Judge, after hearing the case both on the law and merits, dismissed plaintiff's action, on the ground that they had not proved that they suffered any damage in consequence of the words used.

Plaintiffs appealed.

Dornhorst, for appellants.

De Saram, for defendants respondents.

Cur. adv. vult.

14th February, 1895. LAWRIE, A.C.J.—

The first plaintiff has not alleged or proved special damage. He is not entitled to sue for words defamatory of his daughter, although he may have felt pained and distressed. This rule has been applied in India. There is a case reported in *1 Madras, p. 383*, where it was held that a brother cannot sue for slander of his sister. In the case before us the father and daughter join in the action, which, so far as the father is concerned, should, I think, be dismissed with costs.

I agree that it is not proved that the second defendant slandered the second plaintiff. He was present at the wedding party, and heard and probably sympathized with his brother, but it was an exaggeration to assert that he too repeated the words complained of. The action as against him must be dismissed with costs.

With regard to the action by the second plaintiff against the first defendant, the case is, I think, weak. From early times the Sinhalese have been very particular as to those who are invited to weddings. It is regarded as an affront to be omitted, and as an equal affront to be invited to meet inferior people.

Marshall, *p. 412*, gives two instances where refusals to sit down at a marriage feast with persons of doubtful reputation were held to give a cause of action against the too fastidious guest, and therefore the objection stated to this young lady's presence on the particular occasion was not unusual, though of course I do not put it, as the defendant puts it, that the occasion was.

The plaintiff alleged special damage, that she had been turned out of her house by her husband, but that was disproved at the trial. She and her husband had ceased to live together before this wedding.

The rather harsh rule of English law, which dehies damages to a woman whose character has been assailed, unless she can prove special damages, does not obtain in this Colony, and for this slander the plaintiff is entitled to damages. If the defendant had expressed his regret and had tendered five rupees as damages, I would have thought that he had done enough, but he has aggravated the cause of action by repeating the defamation in the answer, and I think he has made himself liable in at least Rs. 50 damages and the costs to which the second plaintiff has been put.

WITHERS, J.—

This is an action by a father and his daughter to recover damages against two defendants for slander.

I think the father was improperly joined.

The District Judge has found that the second defendant did not utter the words complained of, and has disallowed the action against him. We see no reason to disturb that part of the judgment, which regards a mere question of fact.

The first defendant admits, that, at a private dinner party, he excused himself from sitting down at the same table with the first plaintiff, for the reason that the latter's daughter had run away with a Wahumpura man of low caste.

This statement was made in the presence and hearing of a large number of people assembled for the entertainment, and in the presence of the plaintiffs.

The second plaintiff was at the time the reputed wife in diga of a person of her own caste—Vellala caste.

It cannot be doubted that this statement was calculated to reflect upon the moral character of the second plaintiff and injure her in the estimation of society.

What is contumelious in itself, as such language is, presumes the *animus et affectus injuriandi*, which is an element of slander.

The District Judge, however, dismissed the action because the plaintiffs had adduced no evidence to show that either of them had suffered the smallest damage in consequence of this contumely.

The Roman-Dutch law requires no proof of special damage to sustain an action for slander.

If contumely is published deliberately and with intention to offend another, the speaker is liable to be sued for amends.

There are various degrees of contumely, depending on the person of whom, the place where, and the occasion on which, the contumelious language is used, to say nothing of the nature of the language uttered.

There was no defence by the first defendant, unless the frivolous plea of a privileged occasion can be regarded as such. He does not pretend that he spoke in play, or in jest, and under the influence of anger provoked by the person addressed, or under the influence of intoxication. He does not even apologize for what he said. He avers that he repeated what had been village talk, and that he believed it to be true.

This is but an aggravation of his offence.

I would set aside the judgment against the first defendant and adjudge him to pay a sum of Rs. 50 with costs.

BROWNE, J.—

I agree.