

DAHANAYAKE v. JAYASEKERA.

1902.
February 5.

D. C., Galle, 5,671.

Defamation—Privilege—Evidence—Malice.

The report of a headman made to the Government Agent, in response to an order to report upon the petition of an applicant praying for a post under the Government Agent, is a privileged document, which cannot form the basis of an action for defamation, unless plaintiff is able to establish that the statements in the report are untrue and made maliciously.

THIS was an action for the recovery of Rs. 1,000 as damages for alleged defamation. Plaintiff applied to the Government Agent of the Southern Province to be appointed a Police Officer of Maitipe. His application was referred for report to the Mudaliyar, who referred it to the defendant as the Vidane Arachchi of Ettiligoda, where the plaintiff was residing. The defendant reported as follows:—

“ I do not see him worthy at all to receive Government office. Previous to this, he was employed as a compositor in a printing office. Now for the last four or five years he is walking about doing the work of headmen. I have opportunities of seeing him every now and then loitering about the Courts, carrying on lotteries in the village, and going to outstations for the same purpose. By that he gets his living. He has inherited a few shares of lands from his parents. Now he is residing in a house taken on rent.”

Plaintiff averred that the foregoing report was “ false to the defendant’s own knowledge, and was made maliciously and injuriously, with the object of preventing the plaintiff from being appointed to the office of Police Officer, Maitipe, and also with the object of getting the said appointment to the defendant’s brother’s son, who was also an applicant for the said post.”

The defendant pleaded the truth of all the statements contained in the report, and stated that it was a privileged communication.

The District Judge (Mr. F. J. de Livera) dismissed the action holding the report to be confidential and privileged.

Plaintiff appealed.

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Bawa, for appellant. Defendant has pleaded performance of duty as a public officer, and privilege. But that is not sufficient to exonerate him. Privilege depends on *bonâ fides* or good intention (*Silva v. Raman Chetty*, 1 N. L. R. 225; *Tissera v. Holloway*, 1 S. C. C. 29; *Voet*, 47, 10, 20). The law is well stated in Berwick, D. J.'s, judgment, reported in p. 8 of Appendix D in *1 Browne's Reports*, and in *Villiers' Roman and Roman-Dutch Law of Injuries*, p. 208. Plaintiff alleged and was ready to prove malice, but the District Judge avoided the issue framed on this point. [BOXSER, C.J.—It was defendant's duty to tell the truth. He did not volunteer it. His duty is a good defence, if he spoke the truth. Plaintiff cannot succeed without proof of malice or bad motive.] Plaintiff was not given an opportunity to prove his case. [BOXSER, C.J.—What has the respondent to say to this?]

Van Langenberg, for respondent.—The District Judge stopped plaintiff too soon.

5th February, 1902. BOXSER, C.J.—

In this case the judge has dealt with the case too summarily. The plaintiff alleged that the defendant had written, and published by sending to the Government Agent, a libel upon him, and that he had done so from a malicious and improper motive, that motive being alleged in the plaint to be the desire that the plaintiff's candidature to a public office should be rejected by the Government Agent and a relative of his own should be appointed. The defendant pleaded privilege. He alleged that he was a public officer, and that the Government Agent, whose orders he was bound to obey, referred to him on the question of the plaintiff's character and qualifications for office, and that his communication was therefore privileged and that no action could lie in respect of it.

When the case came for trial, the District Judge seems to have taken the case into his own hands, and he decided that in the circumstances an action would not lie. But in this we think he was wrong. No doubt, in the circumstances, the report made by the defendant to the Government Agent was a privileged communication, and cannot form the foundation of an action for libel, unless plaintiff is liable to establish (1) that the statements are untrue, and (2) that these untrue statements were made maliciously, that is, from an improper motive. The plaintiff has pleaded that they were made from an improper motive and were untrue, and he ought, it seems to me, to be afforded an opportunity of endeavouring to prove his case. The opportunity he must now have.

WENDT, J.— I am of the same opinion.