Present: Wood Renton C.J. and Ennis J.

1914.

JAYASURIA *v.* SILVA.

324—D. C. Galle, 12,523.

Slander—Opprobrious language—Malice—Damages, nominal.

The mere use of opprobrious language is technically actionable under the common law; proof of special damage is not necessary to support an action of slander; malice may be inferred from circumstances indicating an intention to commit the wrong.

THE facts appear from the judgment.

A. St. V. Jayewardene, for the appellant.—Mere words of abuse are not of themselves actionable (*Goonetileke v. Geronis Perera* [1]). Sir Edward Creasy calls these actions ill founded and pettifogging. (*Grenier, part III., p. 42.*) Proof of special damage is necessary. Actions of this kind should be discouraged. The appellant has already been fined in the Gansabhawa for the same offence. That was quite sufficient to clear the character of the plaintiff.

C. H. Z. Fernando, for the respondent.—Slander by abuse is actionable *per se* (*Appuhamy v. Kirihamy*,[2] *4 Maasdorp 95*). Substantial damages should be awarded to vindicate one's honour (*4 Maasdorp 16*).

October 21, 1914. WOOD RENTON C.J.—

The plaintiff, the respondent to this appeal, sued the defendant, who is the appellant, in the District Court of Galle claiming a sum of Rs. 1,000 as damages for slander. The findings of the learned District Judge on the evidence have not been seriously disputed, and the material facts are shortly these. The plaintiff had sued the defendant's uncle in the Court of Requests of Balapitiya for an alleged loan of Rs. 50. The uncle denied the loan, and there was a reference to the oath. On the day on which the oath was to be taken a large crowd had assembled to witness the ceremony. The defendant's uncle, however, withdrew at the last moment from his undertaking and paid up the amount of the plaintiff's debt. The defendant thereupon went up to the plaintiff, who is a man of about seventy-two years of age, and had held the office of Vidane Arachchi for a number of years, and demanded from him a sum of three sovereigns, which he said he had given to him several years before. The District Judge has accepted the plaintiff's version with regard to this alleged loan, and holds that it was an advance for the purchase of certain lands, and that as the sale was not completed the advance was forfeited. The defendant, who appears to have been very much

[1] *(1886) 7 S. C. C. 154.*

[2] *(1895) 1 N. L. R. 83.*

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annoyed at what had happened in regard to his uncle's agreement to take the oath, was still more annoyed by the plaintiff's attitude as to the loan of the three sovereigns. Thereupon he applied to the plaintiff opprobrious language of a kind with which our experience in the Assize Court has made us all familiar, and which in itself often means very little. The Roman-Dutch law authorities cited to us in the course of the argument point to the conclusion that the mere use of opprobrious language is technically actionable under the common law; that proof of special damage is not, as is ordinarily the case in England, necessary to support an action of slander; and that malice may be inferred from circumstances indicating an intention to commit the wrong. There is an *obiter dictum* of Sir Bruce Burnside C.J. to the contrary, in so far as the right of action for mere abuse is concerned, in *Goonetileke v. Geronis Perera*.[1] But it seems to stand alone, and on the materials before us I would hold that such an action as the present lies. On the other hand, the clear policy of our law is to discourage litigation of this kind, for the obvious reason that, if a different attitude were adopted, "our Courts," to use the language of Sir Bruce Burnside in the case just referred to, "would soon be flooded with frivolous and filthy suits." There may no doubt be circumstances which invest such an action as this with real gravity, for example, where insulting language is applied to a respectable woman in the presence of a number of her friends (see *Appuhamy v. Kirihamy*[2]). But the facts now before us certainly do not, in my opinion, justify even the moderate award of damages which the plaintiff has received from the learned District Judge, namely, a sum of Rs. 25. No doubt the plaintiff was an old and respectable man, and the language of which he complains was applied to him in the presence of a considerable number of his friends as well as of the general public. On the other hand, there is no reason to doubt but that the defendant was acting under the impulse of sudden anger, and he has already been punished by having been prosecuted and fined Rs. 5 in the Gansabhawa for the very misconduct which forms the subject of the civil proceedings. We are told that the plaintiff came into Court only for the purpose of clearing his character. I should have thought that that end would have been sufficiently accomplished by the prosecution of the defendant before the Village Tribunal, and that the plaintiff might well have left civil litigation alone. I would dismiss the appeal, reducing, however, the damages to one cent, and would direct that each side should pay its own costs of the action and of the appeal. It is scarcely necessary to add that the reduction of the damages in no way involves the conclusion or the suggestion that the plaintiff is other than a perfectly respectable man.

ENNIS J.—I agree.

Appeal dismissed.

[1] (1886) 7 *S. C. C.* 154.

[2] (1895) 1 *N. L. R.* 83.