1956 *Present :* Basnayake, C.J., and Gunasekara, J.

DAWITH APPUHAMY, Appellant, *and* (1) THE ASSOCIATED NEWSPAPERS OF CEYLON, LTD., (2) G. J. PADMANABHA (Editor, "Ceylon Daily News"), Respondents

S. C. 187—D. C. Colombo, 26,617/M

Defamation—Newspaper report—Privilege—Animus injuriandi.

In an action for defamation against a newspaper in respect of a report of certain remarks made by a Magistrate concerning the plaintiff in the course of an inquiry into a petition for a mandate in the nature of a writ of *habeas corpus* that had been presented to the Supreme Court, it was shown that the report was fair and substantially accurate and that it was published shortly after the remarks were made in open court.

Held, that the circumstances negatived *animus injuriandi* and that the report was privileged.

APPEAL from a judgment of the District Court, Colombo.

Sir Lalita Rajapakse, Q.C., with *F. R. Dias*, for the plaintiff-appellant.

H. V. Perera, Q.C., with *G. T. Samerawickreme*, for the defendant-respondents.

Cur. adv. vult.

May 11, 1956. GUNASEKARA, J.—

This is an appeal from a judgment and decree of the District Court of Colombo dismissing an action for damages for defamation. At the close of the argument we dismissed the appeal and said that we would give our reasons later.

The action arose out of the publication in a Colombo newspaper, the Ceylon Daily News, of which the respondents were the proprietor and the editor respectively, of an account of an inquiry held in the Magistrate's Court of Kandy into a petition for a mandate in the nature of a writ of *habeas corpus* that had been presented to the Supreme Court by one Heen Banda on the 5th November 1951. Heen Banda alleged in his petition that a young woman named Ram Menika, who he claimed was his sister, was being improperly detained in the custody of Muhandiram Dawith Appuhamy, the appellant. The petition was referred by a judge of this court to the magistrate for inquiry and report, under the provisions of section 45 of the Courts Ordinance (Cap. 6), and the magistrate made his report on the 24th March 1952. The action was brought in respect of an account of the proceedings before the magistrate that was published in the Daily News of the 31st March.

2——J. N. B 63917-1,593 (2/57)

The cause of action is set out in the 6th and 7th paragraphs of the plaint in the following terms :

"6. On the 31st March 1952 the Defendants published in the Coylon Daily News a report headed ; 'Child slavery says Magistrate' : 'Shameful behaviour of Muhandiram deplored'. They further reported under the said heading as follows :

It is disgraceful and shameful behaviour on the part of one who considers himself a social worker and it amounts to nothing less than child slavery to adopt such an attitude to a girl who had served him for seven years' said the Kandy Magistrate Mr. T. Quentin Fernando to Muhandiram A. W. Dawith Appuhamy at an inquiry into a Habeas Corpus application.

A copy of the said 'Ceylon Daily News' dated 31st March 1952 is annexed hereto marked 'A' and pleaded as part and parcel of this plaint.

7. The Plaintiff states that the said report which refers to the Plaintiff is false and malicious and defamatory of the Plaintiff and that the statements alleged to have been made by the Magistrate of Kandy as set out in paragraph 6 above were at no time made by the said Magistrate. The said report has caused serious damage to the Plaintiff's reputation which the Plaintiff assesses at Rs. 100,000 but the Plaintiff restricts his claim in this action to Rs. 50,000".

The respondents admitted the averments in paragraph 6 of the plaint and denied these contained in paragraph 7. They also pleaded that the publication was made without *animus injuriandi* and was a fair and accurate report of the remarks made by the magistrate, and that it was privileged.

Ram Menika was about 24 years of age at the time of the inquiry before the magistrate. The evidence that has been accepted by the district judge proves that she was at that time a domestic servant in the employ of the appellant's mother-in-law, Mrs. Charles Appuhamy, that from the age of seven she had been with that lady, and that she had at no time been in the appellant's custody or in his employ. The appellant, who was named as the 1st respondent in Heen Banda's petition, and Ram Menika, who was named as the 2nd respondent, appeared before the magistrate on the 3rd December 1951 in obedience to notices requiring their attendance at an inquiry into the petition ; but the petitioner himself had not been served with a notice and was absent, and the magistrate directed re-issue of a notice on the petitioner and also directed that the appellant should appear on the date of inquiry. Eventually all three parties appeared before the magistrate on the 18th February 1952. The magistrate's record of that day's proceedings shows that Ram Menika said that she was staying with Mrs. Charles Appuhamy, that she did not know the petitioner to be her brother, as she had left home when she was about 7 years old and she was now 24, and that she was not willing to go with him but was willing to go with

her maternal uncle if he wished to take her. The magistrate directed that the case should be called on the 10th March 1952. On the 10th March he made this order :

" 1st respondent will appear on 24–3–52. 2nd respondent is willing to go with her uncle Pinhamy and both will appear in court on 24–3–52. Mrs. Charles Appuhamy will also appear on 24–3–52 ".

The record of the proceedings on the 24th March reads as follows :

" 24–3–52

Petitioner. W. Heen Banda

Respondents. 1. Muhandiram A. W. Dawith Appuhamy

2. U. Ram Menike

1st respondent denies that he had the custody of the child.

Sgd. .....
Mag.

Report

The 2nd respondent left with her uncle Pinhamy on 10–3–52. I asked the parties to appear in Court on 24–3–52 with a view of getting the 1st respondent or his mother-in-law Mrs. Charles Appuhamy to ney in the girl's name or to transfer a property in the services rendered by the girl for a period of 7 ved under them. They were not prepared to do that. 1 S. C.

(Signed) .....
Magistrate "

It is in an account of the proceedings held before the magistrate on the 24th March that the words quoted in the plaint appear.

The main question of fact that arose for the district judge's decision was whether the magistrate, Mr. Fernando, did utter these words. Mr. Fernando himself, who was called as a witness for the defendants, said that he did, and his evidence was accepted by the learned judge. It was contended for the appellant that this evidence should not have been accepted.

One of the grounds upon which this contention was based was that the learned judge had found that there were other matters in regard to which he could not rely upon Mr. Fernando's recollection. But it is clear from the judgment that this was a circumstance that the learned judge had considered before he accepted Mr. Fernando's evidence on this point. He states in his judgment :

" Mr. Quentin Fernando himself says that he did make the remarks. I would have hesitated to act upon that statement if the only occasion

thereafter on which he had any reason to recall to mind the remarks he made was the day on which he gave evidence in the witness box. He, however, says that he had good reason to remember his remarks because he read the newspaper report which appeared on the 31st March 1952 in the Daily News on that day itself. Any judge who did not make remarks of this nature is not likely to forget the fact that a newspaper report attributed to him words he never uttered ".

It appears that Mr. Fernando's attention was again drawn to this newspaper report within a couple of months, when he was interviewed by a representative of the paper to ascertain from him if the report was accurate. In a letter of demand written to the respondents on the 19th May the appellant's proctor had said :

" The statements attributed to the Magistrate in the said report are false and incorrect and I am instructed that such statements are at no time made by the Magistrate. The report in question has caused serious damage to my client's reputation ".

A representative of the Daily News interviewed Mr. Fernando on the 24th May 1952 and told him of this allegation and showed him a cutting of the newspaper report, and Mr. Fernando told him that the report was substantially correct and that he was prepared to give evidence to that effect. Referring to the evidence about this interview the learned district judge says :

" Apart, therefore, from the fact that the learned Magistrate was able to recall what he said when he read the Press report on the 31st March 1952, he was further able to fix his mind upon that question by reason of the fact that the representatives of the Daily News in May 1952 saw him again with the same report and informed him that there was a possibility of action being filed. The learned magistrate had then, waiving such privileges as he had, said he was prepared to give evidence. Though, therefore, there is no minute of what the learned magistrate actually said in the record of the Court proceedings, the fact that his mind and his attention were drawn to the matter so soon thereafter would, without doubt, have enabled him to remember the actual words he used ".

The learned counsel for the appellant also urged that Mr. Fernando could not have made the remarks in question because there was no evidence before him that Ram Menika had ever been employed by the appellant. It appears, however, from Mr. Fernando's record of the proceedings held before him on the 24th March 1952 that he had, however erroneously, come to the conclusion that Ram Menika had been in the service of both the appellant and Mrs. Charles Appuhamy and that he thought that one of them should remunerate her for her services.

Another circumstance that was relied upon in support of the argument that Mr. Fernando's evidence should not have been accepted was that the reporter who is said to have taken down his remarks was not called as a witness though he had been summoned and was present at the trial.

Although the reporter may have been able to confirm or contradict Mr. Fernando's account of what he said on the occasion in question I do not agree that the fact that he was not called to give evidence is a sufficient ground for holding that the district judge should not have believed the magistrate's evidence.

The learned district judge has accepted Mr. Fernando's evidence on the question of the accuracy of the newspaper report after a very careful consideration of all the evidence in the case and there appears to be no sufficient ground for disturbing this finding of fact.

There is also no ground for disturbing the district judge's finding that the newspaper report was a fair and accurate report of the remarks made by the magistrate. They were remarks made in a judicial proceeding, for they were made in the course of the inquiry that was being held by the magistrate into Heen Banda's petition, the proceeding was one held in open court, and the report was one published shortly afterwards. These circumstances must be taken to negative *animus injuriandi*; for reports of proceedings of courts of law "stand in a class apart by reason that the nature of their activities is treated as conclusively establishing that the public interest is forwarded by publication of reports of their proceedings"[1]. Nathan observes that (in authoritative works on Roman-Dutch Law) "the principle appears to have been approved of that a certain measure of protection should be accorded to fair reports of proceedings in the Courts of Justice, on the ground that as such proceedings, by the authority of the State, are open to the public at large, it is desirable that they should receive as much publicity as possible, in order that the citizens should have the opportunity of forming an opinion for themselves regarding what takes place in the Courts, and should become accustomed to the manner in which justice is administered".[2] There is no evidence of malice in the publication and the plea of "privilege" has been established.

For these reasons the appeal was dismissed with costs.

BASNAYAKE, C.J.—

I agree with the Judgment of my brother Gunasekara.

I wish to add that the learned trial Judge has made a careful examination of the evidence and I am in entire agreement with his finding of fact that the publication is a fair and substantially accurate report of the proceedings before the Magistrate.

The only question for decision is whether the report is privileged. It is well established that newspapers and newspaper reporters enjoy a qualified privilege in respect of fair reports of proceedings of Courts of Justice. By "proceedings" is meant such of the judicial business as is conducted in open Court. The privilege does not attach to reports of anything that has not transpired in open Court.

[1] *Perera v. Peiris (1943) 50 N. L. R. 145 at 159.*
[2] *The Law of Defamation (1933) pp. 241-242.*

The principle governing the privilege is thus stated by Barry J.P. in *Webb v. Sheffield* [1] :—

> " Though the publication of injurious words was taken to be evidence of an intention to injure, inferred from publication, even though such intention was really absent, still it was of public importance that cases heard in Court should be reported by newspapers, and the publishers held blameless for any injurious statements made, if reported with fairness and substantially accurate, because the necessity for publicity of legal proceedings took precedence over private interests. "

In the same case Shippard J. stated :—

> " There is no proposition of law more firmly established than this, that a fair report of a trial in a Court of law is privileged, nor can we allow it to be questioned. In order to be privileged, the report must be substantially correct and impartial ".

Learned counsel for the appellant challenged the accuracy and fairness of the report. He stated that the speeches and addresses of the pleaders who took part in the case and the other matters that were stated by the Magistrate should have been reproduced in the newspaper.

There is no obligation on a newspaper to publish the entire proceedings of a case in order to come within the ambit of the privilege, nor need the report be verbatim so long as it fairly reflects the proceedings and is substantially correct. The report should be a fair account of what happened and should not be coloured by the personal views of the reporter or by his partiality or hostility to any of the parties. A report may be condensed if the above requirements are observed.

Appeal dismissed.