

1948 Present : **Howard C.J. and Soertz S.P.J.**

CHANDRASENA, Appellant, and PHILIP *et al.*, Respondent.

S. C. 4—D. C. Colombo, 14, 1965

*Defamation — Privileged occasion — Recklessness in making statement — Malice.*

Recklessness in making a defamatory statement, not caring whether it is false or true, amounts to malice. Such a statement is not protected even when the occasion is privileged.

**A**PPPEAL from a judgment of the District Judge, Colombo.

*H. V. Perera, K.C.*, with *N. M. de Silva* and *Sam. Wijesinha*, for the plaintiff, appellant.

*N. E. Weerasooria, K.C.*, with *S. R. Wijayatilake* and *B. Senaratne*, for the 1st defendant, respondent.

*H. W. Jayewardene*, with *G. T. Samarawickreme*, for 2nd defendant, respondent.

*Cur. adv. vult.*

March 5, 1948. SOERTSZ S.P.J.—

The appellant sued the respondents to recover from them jointly and severally Rs. 5,000 which, he averred, were the damages fairly due to him as compensation for the injury caused to him by certain statements which, he alleged, were defamatory and were printed by the second respondent, and published by the first respondent. The trial Judge found the statements complained of were libellous but he dismissed the appellant's action for the reason that he held that the statements were made on a privileged occasion and that they were not made maliciously. In other words, the trial Judge came to the conclusion that the statements were libellous but that inasmuch as, in his view, they were made on a privileged occasion, they were not actionable without the appellant proving malice, and that he had failed to prove it. There can be little doubt, if any, that the statements (A) and (B) in paragraph 5 of the plaint are defamatory, and no doubt whatever that the statement (C) is, for it states that the appellant was the Secretary of a Society for the improvement of agriculture, that he misappropriated its funds and that in consequence the society has become defunct. The questions then that remain for consideration are : (1) Whether these statements were made on a privileged occasion, (2) If they were, whether the appellant has proved malice. The first respondent's case in regard to the occasion being privileged is that he made the statements of which the appellant complains in the course of an election campaign, and in answer to a pamphlet published by a supporter of the appellant commending him to the voters of the electorate as a man who, at a time when schools became disorganised owing to the requisitioning of school buildings by the military authorities during the war had, at his expense, found other accommodation for the evicted pupils and teachers. The first respondent's case appears to be that the claim so made for the appellant was false, that in truth he had exploited the difficult position in which these schools found themselves for his personal gain, or in his own words "to feather his nest"; and he says that he felt that he had a duty to

repudiate that claim, in order to prevent the return of the appellant on a ticket to which he was not entitled. He himself was a supporter of the rival candidate and he was concerned to see that the electorate who had a proper interest in the election should not be misled by prevarication and misrepresentation of facts.

On the evidence in this case, I am inclined to the view that in regard to the statements (A) and (B) the first respondent can claim to be, though somewhat precariously, yet within the plea of a privileged occasion and that, if those were the only statements that we had to consider, the appellant's action would fail on the ground that the occasion was privileged in that the respondent who was interested in the election made the communication to others who were themselves interested in it. The fact that the language he used was strong and in excess of what that occasion demanded does not by itself establish malice. The communication made to the electorate was in reply to a claim made on behalf of the appellant in regard to the interest he manifested in the schools within the electorate. There was no evidence to support malice in fact. The only other point taken by Counsel for the appellant was that the way in which the publication was made was such that it would, in all probability, reach the hands of persons outside the electorate who were not interested in the election. In view of what has been said in the speeches delivered in the leading case of *Adam v. Ward*<sup>1</sup>, I do not think that, having regard to all the circumstances of this case, the publication was unduly wide. In one of the speeches in that case it was said that in considering the question of excessive publication "no nice scales should be used".

But, there is statement (C) left for consideration. That statement was not in reply to the specific claim made on behalf of the appellant, namely, that he had done a great deal to assist the schools of that locality. As Earl Loreburn observed in the case just cited: "The fact that an occasion is privileged does not necessarily protect all that is said or written on that occasion. Anything that is not relevant and pertinent to the discharge of the duty or the exercise of the right or safeguarding the interest which creates the privilege will not be protected." I find it difficult to avoid the conclusion that the first respondent was using the privileged occasion that had offered itself like a stalking horse from behind which to shoot a poisoned dart at the appellant, to say in so many words that the appellant was so far from having helped schools as to have misappropriated the funds of an agricultural society of which he was the Secretary. The first respondent had to admit that he had not a scintilla of evidence to show either that the appellant was the Secretary of such a Society or that he misappropriated any of its funds. He made that statement with cruel recklessness, not caring whether it was true or false. I am, therefore, of the opinion that that statement was in excess of the privileged occasion and that, even if it were not, the first respondent made it with malice.

In regard to the second respondent he was the printer and is himself liable along with the first respondent in respect of that statement.

In the matter of the question of damages, I do not think a sound discrimination can be made between the two respondents.

<sup>1</sup> (1917) A. C. 330.

I would allow the appeal and enter judgment against the two respondents jointly and severally for a sum of Rs. 1,000 with costs in that class here and below.

HOWARD C.J.—I agree.

*Appeal allowed.*

