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

1917.

SARANAMKARA *v.* KAPURALAY.

85—D. C. Anuradhapura, 695.

Defamation—Report by headman to Government Agent containing defamatory statements — Privilege — Malice — Notice of action — Civil Procedure Code, s. 461.

Where the defendant, a headman, was called upon to report as to the plaintiff's allegations against him, and he went out of his way to make a number of gratuitous charges against the plaintiff in the report sent by him to the Government Agent,—

Held, that the communication was not an absolutely privileged one.

A report of this character enjoys only a qualified privilege, which is rebutted by proof of malice.

THE facts appear from the judgment.

A. St. V. Jayewardene, for defendant, appellant.—The report in question was made by the defendant in his capacity as a public servant. Therefore he is entitled to notice, under section 461 of the Civil Procedure Code, whether his conduct was malicious or not. Communications between officers of the Executive Government are absolutely privileged—see *Maasdorp*[1] and *Chatterton v. Secretary of State for India*[2]. Section 124 of the Evidence Ordinance enacts that such communications are privileged from disclosure.

P. M. Jayewardene, for plaintiff, respondent, not called upon.

Cur. adv. vult.

June 5, 1917. WOOD RENTON C.J.—

The plaintiff, a Buddhist priest, sued the defendant, who was formerly the Arachchi of Heenikkiriyawa, for damages alleged to have been sustained by him in consequence of a defamatory report made by the defendant to the Government Agent of the North-Central Province. The defendant admitted that he had made the report in question, but pleaded, *inter alia*, that the action was not maintainable, as no notice of action had been given in compliance with the provisions of sections 461 of the Civil Procedure Code, and also that the report itself was a privileged document, in respect of which no action for damages would lie. He also claimed damages in reconvention from the plaintiff, on the ground of certain allegations which the latter had made to the Government Agent in regard to

[1] *4 Maas. 101, 102.*

[2] *(1895) 2 Q. B. 189.*

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Saranamkara v. Kapuralay

him. At the trial the District Judge dismissed the plaintiff's action, holding that his failure to comply with section 461 of the Civil Procedure Code was a fatal obstacle in the way of its being maintained. The Supreme Court in appeal set the judgment aside, pointed out that in view of the authorities the defendant would not be entitled to notice of action if his conduct had been malicious, and sent the case back for trial on the issues generally. That trial has now taken place. The District Judge has given the plaintiff modified damages, and has dismissed the defendant's claim in reconvention. The defendant appeals.

At the close of the argument yesterday we gave formal judgment dismissing the appeal, with costs. The following, so far as I am concerned, are the reasons for that decision.

Nothing was said to us by the defendant's counsel as to the claim in reconvention, and I see no ground for differing from the findings of the learned District Judge in regard to it. In view of the previous decision of this Court, and also of the authorities mentioned in it, it is no longer open to the defendant to take the point that he was entitled to notice of action whether his conduct was malicious or not. His counsel argued that there was a difference between the present case and any of the authorities above mentioned, in that here the report was made in obedience to an order of the Government Agent calling upon the defendant to answer the plaintiff's charges. In my opinion, howeper, that circumstance in no way alters the defendant's legal position as defined by this Court on the former appeal, although it would be relevant as a matter of evidence on the question of the existence or the non-existence of malice. The defendant cannot say that this report to the Government Agent was privileged from disclosure within the meaning of section 124 of the Evidence Ordinance, inasmuch as it was, in fact, disclosed by the Office Assistant to the Government Agent to the plaintiff, and a copy of it was admitted in evidence without objection at the trial. It is clear law in this Colony,[1] as in England, that a report of this character enjoys only a qualified privilege, which is rebutted by proof of malice. The defendant's counsel called our attention to a passage in *Maasdorp*[2] in support of an argument that official communications between officers of the Executive Government are absolutely privileged, and he further relied on the English case of *Chatterton v. Secretary of State for India in Council*.[3] It is not clear to my mind that there is anything in the citation from *Maasdorp* which shows that, even in South Africa, an absolute privilege would attach to such a report as we have to deal with in the present case. But, be that as it may, the point is covered in Ceylon by the authority of *Dahanayake v. Jayasekera (ubi supra)*, which is direct, and which is binding upon us. *Chatterton v. Secretary of State for India in Council*[3]

[1] *Dahanayake v. Jayasekera, (1902) 5 N. L. R. 257.*

[2] *4 Maas. 101, 102.*

[3] *(1895) 2 Q. B. 189.*

is an authority merely for the proposition that a communication relating to matters of State made by one officer to another in the course of his official duty is absolutely privileged, and cannot be made the subject of an action for libel. It is obvious that there is no analogy between a case of that kind and such an action as the present, where the defendant was called upon to report as to the plaintiff's allegations against him, and went out of his way to make a number of gratuitous charges against the plaintiff, which he has failed in any way to justify.

Shaw J.—I agree.

Appeal dismissed.