

PRIVY COUNCIL

Rt. Hon. Gerald Lord Strickland

Vs.

Carmelo Mifsud Bonnici

P.C.A.No.29 of 1933

(Lords Blanesburgh, Thankerton and Alness JJ.)

29.10.1934

JUDGMENT

LORD THANKERTON J.

1.This is an appeal from a judgment of the Court of Appeal of Malta, dated 27th November 1931, which reversed the judgment of His Majesty's Civil Court of Malta (First Hall), dated 29th January 1931, and dismissed the appellant's claims brought forward in the writ-of-summons. In the writ-of-summons, which is dated 14th January 1929, the appellant claimed damages and reparation for moral injury in terms of Ordinance 14 of 1689 against the respondent as editor of a local newspaper, "The Mid-day News," in respect of an article entitled "An Armistice Day in Rome," which was published in that newspaper on 19th November 1928,

"in which, in the second column, determinate facts, dishonouring and untruthful, are ascribed to plaintiff, damaging said plaintiff's honour and reputation in such a manner as to expose him to public contempt and derision, imputing to him that he had stupidly and unwarrantably attacked the dogmas of the Catholic Faith, in which article the following words occur: 'But the advent of Strickland has created such an atmosphere through his stupid and unwarranted attacks on ... the tenets of faith' ".

2. In his statement of defense the respondent repudiated the claim and demanded its dismissal. In accordance with the practice in Malta the action was tried in the Civil Court of first instance by a Judge sitting without a jury. It is remarkable that the only oral evidence before the Court was that of the appellant and the respondent respectively, and that neither was cross-examined. In his evidence the appellant stated that he had always been a strenuous and militant defender of all the Articles of the

Catholic Faith against anybody whomsoever, and complained that the respondent had imputed to him attacks against Articles of the Faith. The evidence of the respondent was as follows:

"The incriminated article has been written by me. I refer to the Debates of the Legislative Assembly, of which I reserve the right of producing a copy, in which the then Leader of the Opposition, the plaintiff in the present case, rose to speak on the motion proposing the recognition in these Islands of Pontifical Titles. In that speech plaintiff expressly stated that the Church has only one Head, who is Jesus Christ, whilst we hold, according to the doctrine of the Church as laid down in the Syllabus, that the Visible Head of the Church is the Pope and that Jesus Christ is the Invisible Head, and this I consider a Dogma of the Faith (a tenet of Faith)."

3. It was explained that the evidence of the respondent was given in Italian, but that the concluding words in brackets were added by him in English. It may be noted that the incriminated article was written in English. It will thus be seen that the appellant found it expedient to innuendo the word tenets" as meaning "dogmas," while the respondent, in addition to his general repudiation of the appellant's claim, pleaded justification. The appellant produced no further evidence, but the respondent produced certain reports of debates in the Legislative Assembly on 31st January and 18th February 1924, containing speeches by the appellant, and a publication, edited by the Vatican in 1930, containing documents relating to the Maltese Question, and which may be conveniently referred to as "The White Book." This documentary matter was produced by the respondent in support of his plea of justification, and the White Book was not produced as evidence, but only for information and reference. Further, as regards the reports of debates, it is clear, in their Lordships' opinion, that they can only be evidence of what was stated by the speakers in the Legislative Assembly, and are not evidence of any facts contained in the speeches. In their Lordships' opinion, both the Courts have erred in their use of the White Book and the reports of debates as evidence.

4. It would appear that the Trial Judge, who decided in favour of the appellant, accepted the innuendo as proved, but the appellant has failed to produce any evidence to support the innuendo. The evidence of the respondent is irrelevant on this question, which depends on the meaning which the words would be understood by ordinary persons to bear, and not whether the respondent intended them to bear that meaning: *Capital and Counties Bank v. Henty*, per Lord Blackburn at p. 772, per Lord Bramwell

at p. 790. The appellant sought to contend that the context of the word "tenets" in the incriminated article justified the innuendo, but their Lordships are unable to accept the view that, by reason of the context, the word "tenets" could only mean "dogmas". It was common ground between the parties that, while dogmas may properly be described as tenets, the latter word has a much wider range, and includes opinions on religious matters, which do not involve the holder of such opinions in the risk of expulsion from his Church. Here, again, the appellant has led no evidence to prove that the incriminated article is per se defamatory, and their Lordships are unable to hold that it is per se defamatory. As already stated, the White Book and the reports of debates are not evidence for this purpose. It follows that their Lordships agree with the Court of Appeal that the action falls to be dismissed, though on different grounds, and it becomes unnecessary to consider the respondent's plea of justification or any further contentions in the case. Accordingly, their Lordships will humbly advise His Majesty that the judgment of the Court of Appeal should be affirmed and that the appeal should be dismissed with costs.

Appeal dismissed.

Cases Referred.

(1882) 7 AG 741=52 LJ QB 232=47 JP 214=31 WR 187=47 LT 662