

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Davis
and Sons v. Shepstone, from the Supreme
Court of the Colony of Natal, delivered 5th
March 1886.*

Present :

THE LORD CHANCELLOR.

LORD BLACKBURN.

LORD MONKSWELL.

LORD HOBHOUSE.

This is an appeal from a judgement of the Supreme Court of the Colony of Natal refusing a new trial in an action brought against the Appellants in which the Respondent obtained a verdict for 500*l.* damages.

The action was brought to recover damages for alleged libels published by the Appellants in the "Natal Witness" newspaper in the months of March and May 1883.

The Respondent was, in December 1882, appointed Resident Commissioner in Zululand, and proceeded in the discharge of his duties to the Zulu reserve territory. In the month of March 1883, the Appellants published in an issue of their newspaper serious allegations with reference to the conduct of the Respondent whilst in the execution of his office in the reserve territory. They stated that he had not only himself violently assaulted a Zulu Chief, but had set on his native policemen to assault others. Upon the assumption that these statements were true, they commented upon his conduct in terms of

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great severity, observing, "We have always regarded Mr. Shepstone as a most unfit man to send to Zululand, if for no other reason than this that the Zulus entertain towards him neither respect nor confidence. To these disqualifications he has now, if our information is correct, added another which is far more damnatory. Such an act as he has now been guilty of cannot be passed over, if any kind of friendly relations are to be maintained between the Colony and Zululand. There are difficulties enough in that direction without need for them to be increased by the headstrong and almost insane imprudence and want of self-respect of the official who unworthily represents the Government of the Queen."

In the same issue, under the heading "Zululand," there appeared a statement that four messengers had come from Natal to Zululand, from whom details had been obtained of the Respondent's treatment of certain Chiefs of the reserved territory who had visited Cetywayo, and, what purported to be the account derived from these messengers of the assault and abusive language of which the Respondent had been guilty, was given in detail.

On the 16th of May 1883 the Appellants published a further article, relating to the Respondent, which commenced as follows:—
 "Some time ago we stated in these columns that Mr. John Shepstone, whilst in Zululand, had committed a most unprovoked and altogether incomprehensible assault upon certain Zulu Chiefs. At the time the statement was made a good deal of doubt was thrown upon the truth of the story. We are now in a position to make public full details of the affair, which the closest investigation will prove to be correct. A representative of this journal, learning that a deputation had come to Natal

“ to complain of the attack, met five of the
“ number, and in the presence of the competent
“ interpreters took down the stories of each
“ man.”

The article then gave at length the statements so taken down, which disclosed, if true, the grossest misconduct on the part of the Respondent. It was in respect of these publications of the Appellants that the action was brought by the Respondent.

The Appellants by their defence averred that the conduct of the Plaintiff as British Resident Commissioner was a matter of general public interest affecting the territory of Natal, and that the alleged libels constituted a fair and accurate report of the information brought to the Governor of Natal and published in the colony by messengers from Zululand and its King as to the conduct of the Plaintiff in the discharge of the duties of his office, and a fair and impartial comment upon the conduct of the Plaintiff in his public capacity published *bonâ fide* and without malice.

The case came on for trial before Mr. Justice Wragg and a jury on 4th September 1883, when it was proved that the allegations of misconduct made against Mr. Shepstone were absolutely without foundation, and no attempt was made to support them by evidence. It appeared that the messengers from whom the statements contained in the issue in March were derived had come from Zululand to see the Bishop of Natal, and that their statements had been conveyed to the editor of the newspaper by a letter from the Bishop. The statements contained in the issue of May were communicated by a Mr. Watson, who was connected with the staff of the newspaper, and who had sought and obtained an interview with certain Zulus when on their way

to convey a message from the King to the Governor of Natal.

At the close of the evidence the learned Judge summed up the case to the jury, who returned a verdict for the Plaintiff, the present Respondent, for 500*l*.

Application was afterwards made to the Supreme Court to grant a new trial, but this application was refused, and the present appeal was then brought. The Appellants rested their appeal upon two grounds, first, that the learned Judge misdirected the jury in leaving to them the question of privilege and in not telling them that the occasion was a privileged one. The second ground insisted upon was that the damages were excessive. Their Lordships are of opinion that the contention that the learned Judge ought to have told the jury that the occasion was a privileged one, and that the Plaintiff could only succeed on proof of express malice, is not well founded.

There is no doubt that the public acts of a public man may lawfully be made the subject of fair comment or criticism, not only by the press, but by all members of the public. But the distinction cannot be too clearly borne in mind between comment or criticism and allegations of fact, such as that disgraceful acts have been committed, or discreditable language used. It is one thing to comment upon or criticise, even with severity, the acknowledged or proved acts of a public man, and quite another to assert that he has been guilty of particular acts of misconduct.

In the present case, the Appellants, in the passages which were complained of as libellous, charged the Respondent, as now appears without foundation, with having been guilty of specific acts of misconduct, and

then proceeded, on the assumption that the charges were true, to comment upon his proceedings in language in the highest degree offensive and injurious; not only so, but they themselves vouched for the statements by asserting that though some doubt had been thrown upon the truth of the story, the closest investigation would prove it to be correct. In their Lordships' opinion there is no warrant for the doctrine that defamatory matter thus published is regarded by the law as the subject of any privilege.

It was insisted by the Counsel for the Appellants that the publications were privileged, as being a fair and accurate report of the statements made by certain messengers from King Cetewayo upon a subject of public importance. It has, indeed, been held that fair and accurate reports of proceedings in Parliament and in Courts of Justice are privileged, even though they contain defamatory matter affecting the character of individuals.

But in the case of *Purcell v. Sowler*, 2 C. P. Div. 215, the Court of Appeal expressly refused to extend the privilege even to the report of a meeting of poor law guardians, at which accusations of misconduct were made against their medical officer. And in their Lordships' opinion it is clear that it cannot be extended to a report of statements made to the Bishop of Natal, and by him transmitted to the Appellants, or to statements made to a reporter in the employ of the Appellants who, for the purposes of the newspaper, sought an interview with messengers on their way to lay a complaint before the Governor.

The language used by the learned Judge in summing up the present case to the jury is open to some criticism, and does not contain so clear and complete an exposition of the law as

might be desired. But in their Lordships' opinion, so far as it erred it erred in being too favourable to the Appellants, and it is not open to any complaint on their part.

The only question that remains is as to the amount of damages. The assessment of these is peculiarly the province of the jury in an action of libel. The damages in such an action are not limited to the amount of pecuniary loss which the Plaintiff is able to prove. And their Lordships see no reason for saying that the damages awarded were excessive or for interfering with the finding of the jury in this respect.

They will, therefore, humbly advise Her Majesty that the judgement appealed against should be affirmed and the appeal dismissed with costs.
