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COURT OF APPEALS

MR. E. A. CROWLEY'S APPEAL FAILS

CROWLEY V. CONSTABLE AND CO LIMITED, AND OTHERS

Before Lord Justice Greer, Lord Justice Slesser, and Lord Justice Roche

The court dismissed the appeal by the plaintiff, Mr. Edward Alexander (Aleister) Crowley, and author, of Carlos Place, Grosvenor Square, W., from the verdict and judgment given against him in the action tried before Mr. Justice Swift and a special jury which the plaintiff brought against Constable and Co., Limited, of Orange Street, W.C., Charles Whittingham and Griggs (Printers), Limited, of Brunswick Park Road, London, and Miss Nina Hamnett, in respect of an alleged libel in a book entitled *Laughing Torso*, published, printed, and written by the defendants respectively.

Mr. Crowley complained that in *Laughing Torso* Miss Hamnett stated that he had had a temple at Cefalù, in Sicily, where he was supposed to have practiced Black Magic.

The defendants denied that the words complained of were defamatory and further pleaded that if they were they were true in substance and in fact.

The jury returned a verdict for the defendants for whom Mr. Justice Swift entered judgment with costs.

The case was reported in The Times of April 11, 12, 13 and 14 last.

The plaintiff appealed.

Mr. J. P. Eddy appeared for the appeilant; Mr. Malcolm Hilbery, K.C., and Mr. Paul Springman for the respondents the publishers and the printers of the book; and Mr. Martin O'Connor for the respondent Miss Hamnett.

Mr. Hilbery, continuing his argument on behalf of the publishers and the printers, said that their case at the trial was that the statement complained of was no libel. It was not defamatory of Mr. Crowley, nor was it something which could be considered by reasonable people as damaging his reputation having regard to what his reputation was.

Until Mr. Crowley went into the witness-box no one thought of the distinction between Black Magic and White Magic. When the distinction was made the line of the defence was that whether Mr. Crowley's magic was Black Magic or White Magic it was the magic which was affirmed in his writings.

Therefore it was said that the words complained of could not make ordinary people hold him in less esteem.

Lord Justice Greer.—Do you say that the Judge could have held that the words were not defamatory having regard to what you elicited din cross-examination?

Mr. Hilbery.—Yes.

Lord Justice Slesser.—I want to know whether it was part of the plaintiff's case that the words complained of meant not only that he had practiced Black Magic, but that in consequence of his magic, a baby had disappeared?

Mr. Hilbery.—Mr. Eddy opened the case in that way.

Lord Justice Roche.—If the natural inference from those words was that a murder had been committed, I don't know that they would have been followed by a reference to a goat. There would have been something about the police.

Lord Justice Greer.—The Judge seems to have told the jury that if, taking Mr. Crowley's character into account, the statement complained did not defame him, it was no libel.

Mr. Hilbery suggested that he was right. The plaintiff's reputation was so bad that it was not worth anything. The statement complained of was not a libel on Mr. Crowley having regard to his reputation. In Sutherland v. Stopes (41 The Times L. R. 106; [1925] A. C. 47, at pp. 78, 79) Lord Shaw said that the plea of justification must not be considered in a meticulous sense, and that it was the sting of the libel which had to be justified although a defendant might fall short of justifying the actual words. Counsel also referred to a statement by Mr. Justice Cave in Scott v. Sampson (8 Q. B. D. 491, at page 503), where he said: "The law recognizes in every man a right to have the estimation in which he stands in the opinion of others unaffected by false statements to his discredit."

The statement complained of here did not say that Mr. Crowley killed a baby. Many people by conjuring might make a

baby disappear.

Lord Justice Slesser.—I do not think it can be said that it would not be defamatory to say that by magic a man had made a baby disappear.

Lord Justice Greer.—A man might be extremely erotic and yet not be a man who would use his powers to injure an infant.

Mr. Hilbery.—It was obvious that that was not the meaning of the words.

Lord Justice Greer.—That was for the jury.

Mr. Hilbery proceeded to read passages from *Laughing Torso* to show what went before and followed after the words complained of.

Lord Justice Roche.—That seems friendly.

Lord Justice Greer.—The feeling you are creating us that, though there may be something wrong with the summing up, it can be disregarded because there could be only one result to the trial.

Mr. Hilbery.—Any jury would be perverse if it came to any other conclusion.

Lord Justice Greer.—At the moment the law which commends itself to the Court is that this is a case in which we can say that, although the summing up might have been different, and perhaps would have been more satisfactory it if had been more detailed, yet we are inclined to come to the conclusion that the result would necessarily have been the same, however full the summing up.

Mr. Martin O'Connor interposed to say that, in view of that intimation, he would not address the Court on behalf of Miss Hamnett.

Mr. Eddy, in reply, said that, although there was much to suggest that his client had practiced magic, there was a vital distinction between White Magic and Black Magic. That distinction was made plain both in the *Encyclopedia Britannica* and in Frazer's *Golden Bough*. Also the Court might take cognizance of an Act of Parliament passed in 1735. It was because Mr. Crowley was said to have done something that he had been fighting against for years that he had brought his action. His position was that magic was black where the motive was bad and white where the motive was good.

Counsel submitted that the Court could not hold that there was no substantial miscarriage of justice. He referred to Bray v. Ford (12 The Times L. R., 119 [1896] A. C., 44).

JUDGEMENT

Lord Justice Greer, in giving judgment, said that the case had been very well argued. It was not free from difficulty, but they had come to the conclusion that, although there might be something to be said in favour of the view that the summing up was not as full as it ought reasonably to have been, the only possible result of the trial, having regard to the evidence and the admissions of a verdict for the defendants. However much the contentions of Mr. Eddy might have been repeated by the Judge the result would have been exactly the same. The plaintiff was cross-examined for a long time in the witness-box, and he had made admissions which were described by the Judge in his summing up as admission of the grossest kind he had heard in 40 years' experience at the Bar and on the Bench. He said:--"Never have I heard such dreadful, horrible, blasphemous, and abominable stuff as that which has been produced by the man who describes himself as the greatest living poet." That, however, did not relieve the Court of Appeal of the duty of considering what the position was at the time the jury intervened.

The plaintiff of some words used in a chapter in a book of anecdotes or autobiography written by a lady named Miss Hamnett entitled *Laughing Torso*. It was not right, said the Lord Justice, that words should be interpreted without their context.

He (the Lord Justice) regarded the statement as being capable of a defamatory meaning. But there could not be left out of consideration the fact that there was no innuendo pleaded. Therefore, the plaintiff could only treat those words without any innuendo, as having the ordinary meaning of English words.

The suggestion that the words complained of meant that the plaintiff had killed a baby seemed to be an extravagant interpretation of the words. The jury would not be likely to come to the conclusion that the words meant that by means of Black Magic the plaintiff had caused a baby to be killed. The case had been going on for about four days, and the evidence of the plaintiff had been concluded. Mr. Hilbery had cross-examined the plaintiff and had obtained admissions from him. Was it astonishing that the time came when the jury felt it was impossible for them to give a verdict for the plaintiff?

In the summing-up the Judge said that the plaintiff had to prove that his reputation had been damaged. That was not quite accurate. All that a plaintiff had to do in a libel action was to prove that a defamatory statement had been published

about him and the law presumed the damage, and he would be entitled at least to nominal damages.

But it did not follow because there had been a misdirection in one respect that there ought to be a new trial. Order 39, rule 6, of the Supreme Court Rules applied to this case. Under that rule a new trial should not be granted on the ground of misdirection or other grounds specified in the rule, unless in the opinion of the Court of Appeal some substantial miscarriage of justice had been occasioned. A new trial ought not to be granted in this case, because, having regard to the evidence, the result of a new trial would be the same if the case came to be dealt with by another jury of ordinary human beings, and the parties ought not to be put to the expense of a new trial if it could only arrive at the same result. He had come to the conclusion that there was no substantial miscarriage of justice in this case, and the appeal must be dismissed.

Lord Justice Slesser and Lord Justice Roche agreed in dismissing the appeal.

Solicitors.—Messrs Forsyte Kerman and Phillips; Messrs. Waterhouse and Co.; Messrs. Edmond O'Connor and Co.