

GUILT - R.M. Court - Slander - whether words capable of constituting
slander in context used - whether words used - question
of fact Answer - dismissed

JAMAICA

No cases referred to

CRP

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL NO: 39/90

COR: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

BETWEEN DAISY BLACKWOOD PLAINTIFF/APPELLANT
AND MARGARET SHAW DEFENDANT/RESPONDENT

Raphael Bishop for Plaintiff

Crafton Miller for Defendant

18th February, 1991

CAREY, J.A.:

This is an appeal from a judgment of His Honour Mr. R. Stewart, Resident Magistrate, St. Catherine sitting in Spanish Town on 15th May, 1990 whereby he dismissed the plaintiff's action for slander.

By her particulars, the plaintiff alleged, so far as is material, as follows:

1. On the 15th day of February and on the 15th day of March, 1989 at Spanish Town in the Parish of Saint Catherine the Defendant spoke of and published of and concerning the Plaintiff the following words that is to say:

'Yuh Miss Blackwood (meaning the Plaintiff) yuh is a damn thief and yuh dishonest ...'

2. Thereby imputing that the Plaintiff is guilty of a criminal offence punishable by imprisonment

At trial, the defence was stated in these words:

"The Defendant denies using the words as pleaded and further, the words used by the Defendant are not capable of constituting a slander on the Defendant in the context in which they were used."

The second part of the defence is a curious one. It projected that the defendant would adduce evidence of words used by her, not being those pleaded by the plaintiff and say that those words were not slanderous. Of course the Resident Magistrate ought not to have allowed any such defence to have been pleaded.

The facts were these. The parties were participants in what is imprecisely termed "a partner" and the defendant was the "banker". There were eighteen persons comprising this "partner" scheme. The plaintiff had at one time been employed to the defendant as a household-help but had been dismissed prior to the date of the slander. According to the plaintiff, on 15th February 1990 the defendant spoke to her about owing "partner money" and referring to her as a "damn thief and dishonest." Again on 15th March while the plaintiff was on King Street with a Miss Hill, in Spanish Town, the defendant told her she was "a damn thief" and demanded "her partner money." The plaintiff denied owing any money. Sometime after this, she was charged for "Receiving money under false pretences," but no order was made.

The defendant said that when the plaintiff left her employment, she owed the sum of \$350.00. She admitted that in February she met the plaintiff and reminded her of her debt. The plaintiff denied being in her debt. In March when she again saw the plaintiff, she told her she was dishonest. The defendant also reminded the plaintiff that

she had children and ought to set them example. She denied using the words "damn thief" and "damn dishonest."

Mr. Bishop submitted that the defence of justification must be specifically pleaded to allow the plaintiff notice and enable the plaintiff the opportunity of refuting that aspect of the defence. This argument is entirely without substance. The defence as pleaded amounted to a simple traverse of the plaintiff's allegations with an averment that the words actually used were not slanderous. The defendant adduced evidence consonant with that defence.

The case was one of fact. Any judgment depended on the Resident Magistrate's assessment of the demeanour of the parties and their witnesses called to support their respective cases. That is an advantage denied to us. We are in no position to substitute our view of the evidence on merely examining the notes of evidence to that of the Resident Magistrate.

The appeal must therefore be dismissed. We fix the costs of appeal at \$350.00.