

*dismissing pelf's action  
to make reasonable*  
Trial judge apparently found pelf's witness not present therefore  
no proof of publication.

*(Appeal dismissed)*

JAMAICA

*Comp.*

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 21/87

BEFORE: THE HON. MR. JUSTICE CAREY, P. (Ag.)  
THE HON. MR. JUSTICE WRIGHT, J.A.  
THE HON. MR. JUSTICE GORDON, J.A. (Ag.)

*No case referred to*

BETWEEN RALPH EDWARDS PLAINTIFF/APPELLANT  
AND ISAIAH HARRIS DEFENDANT/RESPONDENT

Appellant in person  
Norman Wright for Respondent

October 24, 1988

CAREY, P. (Ag.):

This is an appeal against a judgment of Ellis, J., on the 5th February, 1987 in the Supreme Court, whereby he dismissed the plaintiff's action for slander. The plaintiff appears before us in person, and argued that the learned trial judge was in error when he came to the decision at which he arrived for the judgment was unreasonable.

The words which were alleged to have been used were pleaded in the following form at paragraph 3 of the statement of claim:

"3. On or about the 4th June, 1985 the Defendant used, uttered and published the following defamatory words of and concerning the Plaintiff: 'You Edwards came up here one night, thief out over \$20,000.00 (Twenty Thousand Dollars) went down-stairs and pay a man \$300.00 (Three Hundred Dollars) out of it and say to tell that is me Harris came up here'."

Those words, it was averred, were intended to convey the meaning that the plaintiff was guilty of a criminal offence punishable by imprisonment, and as a result the plaintiff had suffered mentally and financially. The defendant's charges, according to the evidence given by the plaintiff, were alleged to have been made at a meeting of the Stage Carriage Minibus Association on the 4th of June, 1985. That meeting was called for members of that association at about 4:30 in the evening for the director to explain why he was dismissed. Mr. Edwards said on his oath that those words were used and he called a witness, one Mr. Maurice Harris to corroborate him on that point.

The defence filed was a denial that the words were used. We do not have any note of a judgment. There is, however, a note of the points raised in argument by Mr. Wright, as to the questions which properly arose for the learned trial judge's consideration. Both sides focussed on the presence of the witness. Having regard to the conclusion at which he arrived, it must be plain that he found that the witness called on behalf of the plaintiff was not at the meeting. In the result, as a matter of law, he would have been constrained to hold that publication had not been proved. We are of course unable to say whether he found whether the words were used or not.

In the course of the arguments at the Bar, I suggested that learned counsel for the defence was kind to the plaintiff, in that, a defence which seems to arise, having regard to the allegations made and the circumstances in which they were used, viz., qualified privilege, was a defence which was open to the defendant. But Mr. Wright told us this morning that according to his instructions, that was not possible. However that may be, we need not encourage any argument with respect to the true position at law. The fact is that the learned judge, having found, as we are constrained to hold, that Mr. Maurice Harris was not present, that would be an end of the case. We must stress that this Court was denied the advantage of seeing and hearing the witnesses and we are not permitted to substitute our judgment in a case where that advantage has been denied us.

In my view, this appeal must be dismissed and the judgment of the Court below affirmed.

WRIGHT, J.A.:

I agree with the judgment of the learned President, Acting, and there is nothing that I can usefully add.

GORDON, J.A. (Ag.):

I agree with the judgment expressed by the learned President, Acting. I have nothing to add.

CAREY, P. (Ag.):

The judgment of the Court is that the appeal is dismissed, the judgment of the Court below is affirmed and the respondent is entitled to the costs of the appeal.