JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE CIVIL APPEAL NO: 32/78

BEFORE: The Hon. Mr. Justice Henry, J.A.
The Hon. Mr. Justice Kerr, J.A.
The Hon. Mr. Justice Carberry, J.A.

BETWEEN	PERCY SUCKOO	DEFENDANT/APPELLANT
A N D	ALVIN MITCHELL	PLAINTIFF/RESPONDENT

Mrs. P. Benka-Coker for the Defendant/Appellant

Mr. Horace Edwards Q.C. for the Plaintiff/Respondent.

October 12 and December 8, 1978

HENRY J.A.

This is an appeal against the judgment of the learned Resident Magistrate for Clarendon in favour of the Plaintiff/Respondent in an action for defamation brought against the Defendant/Appellant. The learned Resident Magistrate found that the defamatory words were uttered to persons "to whom the Defendant had an interest or a duty legal, social or moral to make the communication" and who had "a corresponding interest or duty to receive it." He however found that the Defendant was acting maliciously and that consequently the defence of qualified privilege could not avail him. The appeal is in respect of this second finding.

The learned Resident Magistrate accepted the Plaintiff's evidence that the words used by the Defendant while pointing the Plaintiff out to a police officer investigating the theft of the Defendant's mules were "See the man there what thief mi mule him and Dada Charoo." He also accepted the Defendant's evidence

indicating that the Defendant had lost three mules and that he had receive information from one Senorine which led him to believe that the Plaintiff had taken or been concerned in the taking of one of these mules. That information indicated that the Plaintiff had left at Senorine's home shortly after the disappearance of the Defendant's mules, a mule which Senorine subsequently purported to identify as being the same as one of the missing mules which was recovered by the Defendant. The Plaintiff, in evidence accepted by the learned Resident Magistrate, admitted leaving a mule at Senorine's home but stated that he had been transporting the mule on the instructions of one Mr. Bolton. He denied that it was one of the Defendant's missing mules, or that he had any reasons to think it was.

The learned Resident Magistrate appears to have based his finding of malice largely on the fact that the Defendant made no enquiry from the Plaintiff (who was his neighbour) about the matter. He did so notwithstanding the case of Beach v. Freeson (1972) 1 QB 14 which he himself referred to in his judgment and which indicates that mere failure to make enquires which might verify or falsify a defamatory statement is not necessarily evidence of malice on the part of a defendant. It may be that he also took into account the fact that the Defendant subsequent to the alleged slander instituted private criminal proceedings against the Plaintiff in respect of the theft of this mule - proceedings which ended in the acquittal of the Plaintiff. We do not however consider that even taking into account this subsequent private prosecution, (if it was admissible) the

learned Resident Magistrate was justified in finding malice on the basis that the Defendant was "totally reckless as to the truth or falsity of the statement" which he made to the policeman. The The Defendant's evidence which was accepted was that he had gone to the Plaintiff's home with the Police and on their instructions. It may well be, as the learned Resident Magistrate found, that he was angry at what appeared to him to be the inaction of the police but this would not necessarily indicate malice. The learned Resident Magistrate has not found that the publication was excessive either on the basis that it was to persons in the Police vehicle who had no interest to receive it or on the basis that it was as the Plaintiff said "loudly on the top of his voice" The persons in the Police vehicle apart from the Police officer and the Defendant were the Defendant's son and two members of the Home Guard who were on patrol with the policeman. Presumably the learned Resident Magistrate took the view that the mere fact that these persons happened to be present would not render the occasion not one of qualified privilege. The Plaintiff's father merely said that the Defendant's "spoke loudly" and there is no evidence other than from the Plaintiff to suggest that this publication was excessively loud or was heard by persons other than the Plaintiff, his father and the police party. It does not therefore appear thatthe finding of malice can be justified. We therefore allow the appeal, set aside the judgment and enter judgment for the Defendant with costs to be agreed or taxed.