

S.C.

number of yards it contains. In my view it is far more reasonable and natural to take it as meaning “folded” as opposed to “rolled.” Such an interpretation in no way diminishes the protection to be afforded to ignorant purchasers. It is impossible to pretend that the layers in a roll are of specific length and very difficult even to count them, and should any dishonest importer subsequently fold goods imported in rolled form into lengths less than the Ordinance requires, he will be committing an offence under s.5 of the Ordinance.

I therefore hold that goods imported in rolled form do not come within the operation of s.3 of this Ordinance, and the present appeal must be allowed and the conviction quashed.

*Appeal dismissed.*

### BANKOLE-BRIGHT v. CROMPTON

Supreme Court (Butler-Lloyd, Ag. C.J.): November 16th, 1928

- [1] Tort — damages — measure of damages — defamation — contemptuous, nominal, substantial and exemplary damages defined: Damages awarded to a successful plaintiff in an action for defamation may fall into one of the following categories: (a) contemptuous damages, awarded when, although the defamation is proved, in the circumstances the action should not have been brought; (b) nominal damages, awarded when no special damage has been suffered by the plaintiff, but the action was justifiable to clear his name; (c) substantial damages, awarded to compensate the plaintiff for damage actually sustained; (d) exemplary damages, awarded to punish the defendant’s malicious conduct as well as to compensate the plaintiff. so the amount exceeds adequate compensation for the injury to the plaintiff’s reputation (page 162, line 27—page 163, line 15).
- [2] Tort — defamation — apology — apology or offer to make apology may be pleaded in mitigation of damages: The defendant to an action for defamation may plead in mitigation of damages any apology or offer to make an apology that he may have made to the plaintiff (page 162, lines 20—24).
- [3] Tort — defamation — damages — measure of damages — contemptuous, nominal, substantial and exemplary damages defined: See [1] above.
- [4] Tort — defamation — damages — mitigation of damages — apology or offer to make apology may be pleaded in mitigation of damages: See [2] above.
- [5] Tort — defamation — interpretation by hearer — words spoken jocularly and intended to be interpreted as such by hearer not actionable: It is a

defence to an action for defamation that the words complained of were spoken in a spirit of jocularly and were intended to be interpreted in the same spirit by the hearers (page 161, lines 7-13).

5 [6] Tort — defamation — slander — slander actionable *per se* — special damage need not be proved: Words disparaging a person's professional reputation such as — "He will poison you," spoken of a doctor to a prospective patient, amount to a slander which is actionable without proof of damage (page 161, lines 7-10; lines 26-29).

10 [7] Tort — defamation — slander — slander actionable *per se* — words disparaging person's professional reputation — imputation of medical malpractice is slanderous of doctor: See [6] above.

[8] Tort — defamation — slander — words spoken jocularly and intended to be interpreted as such by hearer not actionable: See [5] above.

15 The plaintiff brought an action against the defendant claiming damages for slander.

The defendant made the offending remark when speaking to two employees of his firm. He was annoyed at the time, having discovered their intention to consult the plaintiff doctor rather than the doctor employed by the firm and, trying to persuade them to go instead to the latter, said of the plaintiff — "He will poison you." This did not deter the employees, one of whom went immediately afterwards to the plaintiff and accepted medicine from him.

25 The defendant later made a written apology for his remark but this was not accepted, nor was a subsequent offer by him to sign any form of apology the plaintiff should require.

30 The plaintiff brought the present proceedings contending that he was entitled to general damages since the defendant's words disparaged his professional reputation and therefore amounted to a slander actionable *per se*.

In reply the defendant alleged that the words had been spoken in a spirit of jocularly and were not therefore actionable. Alternatively, he contended that his apology should be considered in mitigation of damages.

35 The court gave judgment for the plaintiff.

*Beoku-Betts* for the plaintiff;  
*C.E. Wright* for the defendant.

40 BUTLER-LLOYD, Ag. C.J.:

I should like to preface my judgment on this matter by pointing out that my functions throughout have been practically limited to

those usually performed by a jury. In cases of this nature the judge is commonly called upon to decide whether the words complained of are capable of defamatory meaning, questions of privilege and the like; none of these matters have arisen in this present case. The words complained of are such as to be actionable *per se* and publication is not denied, nor has any question of privilege arisen. 5

The gist of the slander complained of are the words — “He will poison you,” spoken of the plaintiff in his capacity as a medical man to an intending patient. A clearer case of words actionable *per se* can hardly be imagined, but it has been argued for the defence that the words were spoken jocularly and so understood by the hearers. I agree that if this were so it would be a defence to this action, but having regard to the circumstances in which the words were spoken it seems quite impossible to regard the matter in this light. There is evidence from both sides that at the time they were spoken the defendant was in a state of irritation, to put it no higher, and such a mood is not the usual occasion for jocularity, further the defendant admitted in answer to a question of mine that he had an object in speaking them, namely, to induce Ashwoode to go to the firm’s own doctor, Dr. Renner, instead of Dr. Bankole-Bright. There is nothing improper in this motive, but the fact that the words were spoken with the above-mentioned intention is quite inconsistent with their being spoken and intended to be taken jocularly, in which case they could not have been expected to have any effect on Ashwoode’s mind. 10 15 20 25

I therefore hold that the words were not spoken jocularly but had their usual significance and were defamatory, and being spoken of a professional man are actionable *per se*, that is without proof of damage.

With the second point made by the defence, that the defendant is responsible for his own utterances only and not for any repetition of them unless authorised or contemplated by him, I am in entire agreement but it is of little importance here for no republication is alleged. Having proved that there has been a slander such as is actionable *per se* the only remaining question is damages. 30 35

Now no special damage has been alleged or proved in this case. It is a question of general damages. According to Odgers in *Libel and Slander*, 3rd ed., at 337 (1896):

“General damages are such as the law will presume to be the natural or probable consequence of the defendant’s conduct. They arise by inference of law; and need not therefore be 40

proved by evidence. Such damages may be recovered wherever the immediate tendency of the words is to impair the plaintiff's reputation, although no actual pecuniary loss has in fact resulted."

5 Now I do not think it is contended here that pecuniary loss has resulted. Both the witnesses who heard the slander have stated that it would not prevent their going to the plaintiff again, and one actually did so and took some of his medicine within a few minutes of hearing the slander, but that fact does not deprive the  
10 plaintiff of his right to such damages as the jury, or myself as their representative may think fit to award.

Now on this point, it is material to consider the apology contained in defendant's solicitor's letter dated August 24th since this apology has been pleaded in mitigation of damages. It has been  
15 complained that this apology was not a sufficient retraction or expression of regret for the harm done. It contains reservations and no offer to pay the costs incurred up to that date. I should have had some sympathy with this contention if there had not been a further offer to sign any form of apology the plaintiff  
20 should require. Having allowed this offer to go unanswered it ill becomes him to complain of the terms previously used. The defendant has in fact relied upon the apology contained in his letter of August 24th but I think he might have relied equally well on the subsequent offer since by Lord Campbell's Act the  
25 mere offer of an apology may be pleaded.

In *Odgers (ibid., at 339)* I find the following classification of damages:

"The damages which the jury award a plaintiff may be either, —

- 30 (i) contemptuous,
- (ii) nominal,
- (iii) substantial, or
- (iv) vindictive.

(i) *Contemptuous* damages are awarded when the jury  
35 consider that the action should never have been brought. The defendant may have just overstepped the line, but the plaintiff is also somewhat to blame in the matter, or has rushed into litigation unnecessarily; so he only recovers a farthing or a shilling. There is no necessary inconsistency in a jury finding  
40 that a libel was written maliciously and yet awarding only a farthing damages. (*Cooke v. Brogden & Co.*, 1 Times L.R. 497.)

(ii) *Nominal* damages are awarded where the action was a proper one to bring, but the plaintiff has not suffered any special damage and does not desire to put money into his pocket, he has cleared his character, and is content to accept forty shillings and his costs.

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(iii) *Substantial* damages are awarded where the jury seriously endeavour, as men of business, to arrive at a figure which will fairly compensate the plaintiff for the injury he has in fact sustained.

(iv) *Vindictive* or *retributory* or *exemplary* damages are awarded where the jury desire to mark their sense of the defendant's conduct, by fining him to a certain extent; they, therefore, punish the defendant by awarding the plaintiff damages in excess of the amount which would be adequate compensation for the injury inflicted on his reputation."

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Now into which of these four classes does the present case come? The fourth is out of the question here being usually based on malice, either in the defamation itself or in the conduct of the case, of which there is no suggestion. The third is properly limited to cases where substantial injury has been in fact sustained. The first is usually an expression of opinion by the jury that the case ought not to have been brought, and I am certainly not of that opinion.

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There remains the second, which seems to me to correctly fit this case:

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"*Nominal* damages are awarded where the action was a proper one to bring, but the plaintiff has not suffered any special damage and does not desire to put money into his pocket, he has cleared his character, and is content to accept forty shillings and his costs."

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Now in my opinion this action was a proper one to bring and I have already said that there has been no special damage. The plaintiff's letter of August 24th indicates that he has no desire to put money in his pocket, and his counsel in court stated that he would have advised him to accept an apology coupled with an offer to pay costs. I think however that the sum suggested in *Odgers* is too low and savours of contempt and I therefore award the sum of £5 and the costs of the case.

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*Judgment for the plaintiff.*

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