DENNIS, Appellant, vs. BOWSER, Appellee.

1 LLR 5; LRSC 3 (1 January 1861)

[January Term, A. D. 1861.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.

Slander—Special damages—Evidence.

1. Words not actionable per se, cannot support action for slander without proof of damage, special or general.

2. Proof of special damages cannot be given in evidence under a general allegation in the declaration.

3. The right to freely speak, write and print on any subject is a constitutional right which all may fairly exercise, but if the motive for so doing should appear to be malicious, a responsibility attaches for the abuse of such right.

This case has come up before this court on appeal by the plaintiff, respecting the appellee, in appeal, for which he was held in damages by the court below, in the sum of two hundred and fifty dollars. From this decision the defendant appealed to this tribunal for a hearing on its final issue. The hearing and the consideration of the case, from the records, with the statement of the testimonies, which appear to be full and concise, leads the court to arrive at a decision, contrary to the finding of the court below. To regard the words expressed, they do not convey any specific charge which might be the ground of public prosecution, nor even malice attending; and as they are laid, they are not actionable. They were apparently but the expression of an opinion against an opinion, in mutual conversation, as one of the witnesses testified, from the record, and the Constitution, in support of this right to express an opinion as communicative and intelligent beings, gives ample liberty and support. It is equally certain and indubitably clear that in the expression of the words no malice was shown to have preceded them, or even that specific damages had ensued by such expression except on the ground of hearsay, which in law cannot be taken as evidence except in such instances as have been particularly provided for. The statute declares when special damages are relied upon it must be stated in the complaint and proven. (Page 8, sect. 37.) To note the special bearing of testimonies upon which the special damage in the complaint appears to rely, it is precedent that in slander 'proof of special damage cannot be given in evidence under a general allegation, in the declaration; that by reason of speaking the slanderous words, divers persons who had employed the plaintiff had withdrawn themselves." (Dutt. Comm. Dig. page 332, in the case of Bostwick vs. Nicholson.)

Even without this feature in connection with the complaint, the effort to establish the action and to recover damage on the ground of hearsay exploded itself, and could not have been supported by any jury unbiased in their deliberation. Furthermore, all statements of facts made under the circumstances mentioned in this section shall be taken to be true, until the contrary appears, or malice is shown,—the statement made in section 27, page 6, of the statute, which embodies in very comprehensive words the inherent right of free communication in the expression of thoughts, views and opinions respecting all men who may be candidates for any public trust, whenever it is coupled with an honest intention to accomplish good. It would be dangerous in the extreme to allow the least intrusion upon so sacred a right and privilege, especially when the Constitution declares "that every citizen shall freely speak, write and print on any subject, being responsible for the abuse of that liberty." It is true that if malice is deceptively screened under, and these privileges and rights thus granted be used as a cloak, and other motives are the

imprompter, the law fairly demands the proof, in the way and manner provided, and if true, will give speedy and wholesome remedy, but not until then. The mere effort to establish the fact that the words were spoken without proof that they were not true, did not establish anything at all, it only establishes its truthfulness without contradiction by the testimony. But with regard to words that do not thus apparently and upon the face of them import such defamation as will of course be injurious, it is necessary that the plaintiff should aver particular damage to have happened, which is called laying his action with a per quod. (Wend. Black. Bk. 3.) Hearsay, however, cannot grant it. Furthermore, '(and where there is no injury the law gives no remedy." (Ibid.) This is agreeable to the reasoning of the civil law. The Constitution and statute laws regard with sacred jealousy the right of "free speech," the full expression of those words and opinions which are necessary to convey our ideas and feeling and meaning to each other. It is a privilege that no jury in the land, nor court, has the right to suppress or circumscribe. Courts having the aid of jurors ought to be alive to those points of law which embrace individual and public constitutional rights, that they be not invaded by opinions of jurors in their verdicts. The duty of the courts is to guard with an eagle's eye the Constitution and laws, and only upon satisfactory proofs a citizen is to be held responsible for an abuse of his constitutional liberties. Upon the whole, therefore, it is the opinion and judgment of the court that it appears by the records before it that the appellant in appeal is not guilty of slander, and it is hereby decreed that the judgment of the court below for the plaintiff must consequently be reversed, and a mandate issue that the appellee recover nothing as damages, with the payment of all costs.