

6.
IN THE HIGH COURT OF AUSTRALIA.

Walsh

v.

James

REASONS FOR JUDGMENT.

OF HIS HONOUR

MR JUSTICE STARKE

15/1937

Judgment delivered at *Melbourne*
on *15th March 1938*

IN THE HIGH COURT)
OF AUSTRALIA.)

*His Honor
Starke
High Court*

WALSH

Plaintiff

e v-

JAMES

Defendant.

Before HIS HONOR MR JUSTICE STARKE

On Tuesday, 15th March 1938,

at 10.30 a.m.

(Second day of hearing)

JUDGMENT.

Consider in Victoria v
HIS HONOR: This is an action by Thomas Walsh who is an inspector
under the Dried Fruits Act against F.A. James who is a fruit
grower and fruit dealer in South Australia. The action is
for slander and the allegation is that Mr. James said to
Mr. Walsh: "When you are giving evidence on oath again be
careful Mr. Walsh and do not commit perjury". There is no
doubt in my mind that those words were used, and I accept
substantially what the plaintiff and his witnesses said,
particularly the evidence of Constable Taylor. Some other
words were added, at the same time which have not been charged
as part of the slander, but which were part of the conver-
sation at the time, and ~~therefore~~ if taken with the words
which were laid as the slander, indicate precisely what Mr
James meant. But for the purposes of my judgment I
shall put them on one side and simply consider whether the
words which are laid as the slander are capable of the

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meaning that Walsh had committed a criminal offence, namely, perjury. In my opinion they are capable of that meaning when the circumstances under which they were uttered come to be considered. Walsh on that morning had given evidence in a case against a man named Hartley who had purchased ^{from} or sold, I am not sure which, to Mr. James some fruit in contravention of the provisions of the Dried Fruits Act. On coming out of Court at lunch time after Walsh had given his evidence, Mr. James thought proper to go up to Walsh and use these words which are complained of. In those circumstances it seems to me the words are very capable of the meaning which it is said they bear, that in giving that evidence he had committed perjury and that he had better be careful not to do it again. The only other question I have to consider is whether words which are so capable of a defamatory meaning would convey that meaning to reasonable persons who heard them. I have no doubt again that they would convey that meaning to reasonable persons, and I so find. Mr Travers has then suggested that the ^{occasion} ~~action~~ was privileged, what the privilege is I find it difficult to understand. You have Mr. James insolently going up to the witness outside the Court and accusing him of perjury. It seems to me there was no privileged occasion at all, under such circumstances, and even if there were, the motive which prompted Mr. James in doing it was some annoyance as to the fact of the prosecution of Hartley and of other persons who were about to be prosecuted, and apparently at some statement which Mr. Walsh had made which Mr. James ~~had~~ considered was inaccurate. That is all he could say in the box, that Walsh had made an inaccurate statement and he goes to Walsh and accuses him of perjury. I think there was no privileged occasion, and even if there were, then the excess of that occasion warrants the implication it was made from a wrong motive and from actual malice,

and I so find. The only other question that I think now I need deal with is the question of damages. It is not an occasion for heavy damages. The publication apparently is not known to have extended beyond two or three people perhaps four, and I think Mr. Walsh has behaved very properly in saying that he does not want ^{heavy} ~~any~~ damages, but he ^{desires} ~~wanted~~ to have his reputation as a truthful and honorable man sustained before the public. That I think he is entitled to, so I will give him £50 damages and the costs of this action, including the costs of the shorthand notes. There will be judgment for £50. with costs.
