

IN THE HIGH COURT OF AUSTRALIA

Kosovick

v.

Andreyevich.

Oral

REASONS FOR JUDGMENT

Rich - "agree"

Williams - P

Judgment delivered at *Sydney*

on *23rd April 1947.*

IN THE HIGH COURT OF AUSTRALIA)
NEW SOUTH WALES REGISTRY)

KOSOVICH v. ANDREYEVICH

23rd April 1947.

JUDGMENT:

LATHAM C.J: The decision of this appeal depends upon a determination in relation to the defence of qualified privilege in an action of libel.

Qualified privilege has seldom been successfully claimed for a publication in a newspaper, but a wide publication is sometimes protected by qualified privilege as in the case of *Adam v. Ward* (1917 A.C.) to which reference has been made. In this case it is put that the circumstances of the publication were very exceptional and we are reminded that it has been said, not only in this Court in the case of *Howe v. Lees* (11 C.L.R.361), but also in the House of Lords in *London Association for the Protection of Trade v. Greenlands Ltd.* (1916 2 A.C.15) -, that there is no exhaustive classification or catalogue of cases in which the defence of qualified privilege is available. The exceptional circumstances, which are relied upon here, are, first, that the publication was made in a paper circulated, so far as the evidence goes, only among Yugoslavs in Australia and printed in the Croation language, which is generally not understood in Australia. Therefore although it was circulated to some thousands of subscribers, yet the circulation was limited to people of a particular nationality who had a particular interest in Yugoslavia.

Further, it is put in this case that the case is exceptional in that the defendant was not only a member of the Yugoslav community in Australia, but also a leader in several Yugoslav organisations. It is therefore submitted that the members of the community and the defendant had a common interest in the subject-matter of the statements made by the defendant at least in so far as they related to the attitude of the plaintiff to the Resistance Movement in Yugoslavia and to efforts

being made in Australia in support of that movement. For myself, I would agree that there was a common interest of a very real kind in the attitude of Yugoslavs in Australia towards the Resistance Movement at a time when the country was resisting the Germans and fighting for its life. But the privilege extends only so far as the statements made relate to that common interest, and in my opinion the statements made diverge from the subject matter of common interest into general abuse of the plaintiff. These abusive statements were, in my opinion, not reasonably incidental to the exercise of the right attaching to the common interest.

In my opinion, accordingly, as the learned Chief Justice has held, the privilege was exceeded. For this reason the judgment of the Full Court was right and the appeal should be dismissed.

I would like to say that we think Mr. Jenkyn has said everything that could be said in the case.

ORDER: Appeal dismissed with costs.

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J U D G M E N T :

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JUDGMENT

STARKE J. I also agree with the conclusion of the Supreme Court that the occasion was not privileged.

The law governing the case is set forth in Adam v. Ward 1917 A.C. 309 and Watt v. Longsdon 1930 1 K.B. 130.

KOSOVICH v. ANDREYEVICH

JUDGMENT.

McTIERNAN J.

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JUDGMENT.

McTIERNAN J.

I agree that the appeal should be dismissed. In the article complained of there are statements highly defamatory of the plaintiff. I do not think that these statements or some of them were germane or pertinent to any possible duty or interest which the appellant relied upon to make the occasion a privileged one.
