

HIGH COURT. 1961. 9, 23, March. MARSACK C.J.

Libel - newspaper publication - whether statements defamatory - whether fair comment on matter of public interest - damages.

Generally speaking, defamatory matter is matter which, either directly or by insinuation or irony, tends to expose any person to hatred, irony or ridicule. Accordingly where, without evidence and contrary to fact, the defendant had published comments of a newspaper correspondent which, in effect, accused the plaintiff of using underhand methods to deprive the Government of revenue properly payable and attributed the plaintiff's failure to help a business rival to an unworthy motive, namely, jealousy, it was held that the publication was defamatory of the plaintiff. Furthermore, it was held that the words published did not constitute fair comment on a matter of public interest; they being based otherwise than on a true statement of the facts.

The conduct of the parties - endeavours on behalf of the defendant to discuss the matter and the failure of the plaintiff to take steps which might have resulted in proper amends being made - are factors properly to be taken into account in mitigation of damages.

Cropp v. Tilney (1693) 3 Salk 225; Lefroy v. Burnside (1879) 4 L.R. Ir. 556 referred to.

Judgment for plaintiff.

CLAIM for damages for alleged libels contained in newspaper publication.

Plaintiff, in person.  
Metcalf, for defendant.

Cur. adv. vult.

MARSACK C.J.: This is a claim for £2,000 damages in respect of certain alleged libels concerning the plaintiff which were published in the "Samoa Bulletin" on the 23rd December 1960 and 6th January 1961, in letters to the Editor signed "Citizen". The defendant Company is the proprietor of the "Samoa Bulletin". Publication of the words complained of, which are detailed in full in the Statement of Claim, is admitted. The defence is that:-

- (a) The words are incapable of a defamatory meaning; and
- (b) In any event the words are fair comment on a matter of public interest.

There is no dispute about the facts giving rise to the publication of the letters in question. When the Prime Minister Fiamé went to attend a meeting of United Nations in New York, photographs were taken of his arrival in San Francisco. These photographs were sent by the Traffic Manager of Pan American Airlines in San Francisco to the Company's local agents, the Gold Star Transport Co Ltd. The Manager of the Gold Star Travel Department discussed the question of publication of the photographs with the Editor of the "Samoa Bulletin". As the defendant Company did not have the necessary block-making machinery, the Gold Star representative called on Mr Rankin, whose company is equipped with that machinery, and asked that he should have blocks made so that the photographs could appear in the "Bulletin". The plaintiff replied "I don't do work for the Samoa Bulletin". He refused to make the blocks for publication in the other newspaper, but offered to publish the photographs free of charge in the next issue of "Samoana", the weekly paper of which plaintiff is Managing Editor.

This was the incident that called forth the criticism from the correspondent to the "Bulletin" signing himself "Citizen". His letter published on the 23rd December indicates quite clearly that he thought that plaintiff was greatly to blame in refusing to make the blocks for publication in another newspaper. He then makes the allegation complained of, namely, that "the gentleman concerned" - who had been previously referred to as the Managing Editor of Samoa Newspapers Ltd, that is to say the plaintiff - must have overlooked the fact that the block-making machine was imported into the country free of duty for the sole purpose of promoting industry. He comments "it only goes to prove the narrow-mindedness and selfishness of some people".

The assertion as to the circumstances surrounding the importation of the machinery was quite contrary to fact. Correspondence which passed between plaintiff, on behalf of his company, and the Customs Department, establishes beyond doubt that the block-making machinery was imported, as the Customs Department was informed, for the purpose of printing a new illustrated weekly paper. The duty payable on the machinery was correctly assessed at 5% and the amount of duty, £150, paid by plaintiff's Company. Plaintiff contends that as the block-making machinery was specifically imported for the purpose of publishing a weekly newspaper which might be made the more attractive to the public by the use of topical illustrations, there was no legal or moral obligation on the part of that company to remedy the deficiencies in equipment of the rival publishing concern by making blocks for publication in the other newspaper. This contention is in my opinion sound. The comment, therefore, that the action of plaintiff in refusing to make blocks for defendant "only went to prove the narrow-mindedness and selfishness of some people" was not only based upon an incorrect assessment of the facts, but was also not proper comment in itself.

In the "Samoa Bulletin" of 30th December is published a letter from plaintiff setting out the position from his point of view. This letter is definitely uncompromising in tone. It contains not only an explanation of the refusal to make the blocks for the "Bulletin", but also an allegation that misreporting was a not unusual feature of that journal. There is, in addition, a certain amount of propoganda extolling the virtues of his paper "Samoana" as compared with the "Bulletin".

On the 6th January 1961 there was published in the "Bulletin" a further letter from "Citizen" in which the false statements are made that the £150 paid was not duty, but port and service tax; that the correct duty would have been approximately £1,000; and that plaintiff was "smart enough to have duty exempted with an excuse that the machine was for the promotion of industry." These statements were not only false, but it is clear from the evidence that they were not even checked. Mr E.F. Paul, who is Managing Director of the defendant Company and was also at the time Minister of Customs, saw the letter before it was published and knew that the statement regarding customs duty of £1,000 was wrong; and yet no action was taken to correct it before publication.

The comments of the correspondent to which exception is taken are these: "the only reason for his refusal was just plain jealousy", "he even tried to hinder the freedom of the people", "this is not the first time the gentleman has fooled the Government". These statements are in my opinion clearly defamatory. There is no evidence that plaintiff had "fooled" the Government on this or any other occasion. He had been careful to disclose all the facts with regard to the importation of the machinery and in no way could be said to have been "smart enough" to have avoided paying duty by an excuse.

Generally speaking, defamatory matter is matter which, either directly or by insinuation or irony, tends to expose any person to hatred, irony or ridicule. The statement of the law in the old case of Cropp v. Tilney (1693) 3 Salk 225 is still quoted with approval today:

"Scandalous matter is not necessary to make a libel; it is

enough if the defendant induces an ill opinion to be had of plaintiff, or to make him contemptible and ridiculous."

The words complained of here accuse the plaintiff, in effect, of using underhand methods to deprive the Government of revenue properly payable. They attribute his failure to extend a helping hand to a business rival to an unworthy motive, namely, jealousy. In my opinion a person reading the letters signed "Citizen" might well be induced thereby to form an ill opinion of plaintiff, to regard him with something approaching contempt. Accordingly I find myself unable to uphold Mr Metcalfe's contention that the words are incapable of a defamatory meaning.

As to the defence of fair comment, it is true that expressions of opinion, if honestly given, will not support an action for libel, even if they are couched in more violent terms than the circumstances strictly warrant; but they must be based upon a true statement of the facts. A comment cannot be fair when it is built upon a mis-statement of the facts.

In Halsbury volume 24 p. 70 paragraph 123, the requirements of the defence of fair comment are thus summarised:

"The defence of fair comment requires that the material fact or facts upon which comment or criticism is based, should be truly stated and be a matter of public interest, and that the comment or criticism on the fact or facts should be fair within the wide limits which the law allows."

It must be conceded that the matter of publication of photographs of the Prime Minister arriving in the United States would be a matter of public interest. It has been shown, however, that the facts upon which the comment or criticism is based in the instant case were not truly stated. The circumstances of the publication, particularly of the letter of the 6th January, fall almost exactly within the statement of the law set out in Lefroy v. Burnside (1879) 4 L.R. Ir. 556:

"If the facts as a comment upon which the publication is sought to be excused, do not exist, the foundation of the plea fails."

That in my opinion is the case here. The alleged fact upon which the comments of "Citizen" were made, is that the plaintiff induced the Customs Department to admit block-making machinery duty free, on the ground that it would be used for the development of public industry. But, in fact, the correct duty was paid on the importation of the machinery, which was purchased expressly for the purpose of publishing an illustrated weekly paper. The defence of fair comment therefore fails.

As I have hold that the words complained of were defamatory of the plaintiff and that the defence of fair comment does not succeed, then the plaintiff is entitled to damages. The question of the quantum gives rise to some difficulty. The plaintiff may perhaps urge in aggravation of damages, the fact that an offensive comment on plaintiff's activities as a poultry farmer, activities which had nothing whatever to do with the matter in issue - which was his refusal to make blocks for a rival concern - was published in the letter of 6th January and that this clearly indicates an intention rather to injure the reputation of the plaintiff than to comment fairly, if strongly, on a matter of public interest. On the other hand, there are several matters which counsel for defendant properly submitted in mitigation of damages. Mr Jackson, director of and solicitor to the defendant company, who has acted at times as solicitor to the plaintiff, made a special journey to Apia during the Christmas vacation for the purpose of trying to settle the matter. He discussed the matter with Mrs Rankin and said he would be happy to talk the matter over with plaintiff if the latter would come to see him. Plaintiff, however, rejected these overtures, and took no steps which might have resulted in proper amends being made without the necessity of Court action. I have already referred to the tone of plaintiff's letter of the 30th December. I conclude that the plaintiff was not anxious to give

defendant any opportunity to make an adequate apology and such other amends as Mr Jackson might be prepared to advise the defendant company to make. Then again, although it is part of plaintiff's case that the "Bulletin" is a newspaper with a wide circulation both in Samoa and overseas, his own published statement on the subject in his letter to the "Bulletin" of 30th December is to the effect that the total circulation of the "Bulletin" - of which journal he himself acted as editor for a period - is little more than half that of "Samoaana". The circulation of the latter paper plaintiff stated in evidence to be approximately 4,000. It can hardly be said, therefore, that the statements complained of have been published widely as the term is understood with reference to newspapers today. Plaintiff's contention that he might, because of the publication of these letters in the "Bulletin", lose remunerative employment overseas, seems to me fanciful and to have little merit. In this small community of Western Samoa, it is unlikely - and in fact is not suggested by plaintiff - that because of the libels he would lose the society of his friends; though the words spoken might tend to injure his reputation in the eyes of the general public.

Taking into account all the circumstances regarding the conduct of the parties from the time of the publication of the first letter until the trial, and such injury as may have been caused to the reputation of the plaintiff, and his wounded feelings, I assess the damages recoverable by plaintiff against defendant at £100.0.0.

There will be judgment for the plaintiff for the sum of £100.0.0 together with such disbursements and expenses as may be certified by the Registrar.