

TAPUA'I (ALESANA) v TAGO TOALUA (EPENESA)

Supreme Court Apia
St John CJ
25 August 1980

LIBEL AND SLANDER - special damages - "matai"

HELD: Without proof of special damage, slander is not actionable per se.

T K Enari for Plaintiff
Defendant in Person

The Plaintiff, Tapua'i Alesana, a Matai of the village of Sagone, seeks damages for slander from the Defendant Epenesa Tago Toalua, a woman of the village of Saleaula. The English translation of the words spoken to a number of people in the Samoan language is -

"I have been fined \$50 for fighting. I found Tapua'i Alesana being assaulted by the girls of the Bank of Western Samoa in Apia. If I had not joined in he would have been really hurt and useless."

The Defendant appeared before the Court and stated that she did not wish to defend the action; it was then set down for hearing as an undefended action.

I am satisfied on the evidence that the Defendant spoke the words alleged and that such words were untrue. No such incident occurred.

Slander is generally not actionable per se. Proof of special damage is necessary; see Gatley on Libel and Slander 6th Edition at page 134 at seq. and the cases therein cited.

The Plaintiff sought to prove special damage by opinion evidence that his village council would investigate the truth of the Defendant's statement and would fine the Plaintiff some 50 sows and all his taro crops. Neither the Plaintiff nor his witnesses could identify any person who believed or was inclined to believe the Defendant's statement. That is not surprising as the incident as described by the Defendant is one of inherent improbability, and becomes more improbable when the Plaintiffs excellent reputation is taken into account. I am not satisfied

on the probabilities that there is any real prospect of the village council accepting the Defendant's statement as being truthful or in any aspect credible. I therefore reject that evidence as proof of special damage. Additionally, the Plaintiff and his witness gave evidence, that a finding by this Court that the statement was false would mean that the village council, which was awaiting this court's decision, would not proceed to adjudicate on the matter. The finding of fact I have already made will, therefore mean that no special damage will be suffered.

Considering the words alone I have grave doubts as to whether they are capable of a defamatory meaning. Their natural meaning does not imply reprehensible conduct on the part of the Plaintiff. The implication relied upon was that the Plaintiff was involved in a brawl. To be assaulted is not to brawl. To have another female resist the assaulters, apparently of her own motion, is not an imputation against the character of the person assaulted.

The position of a matai in relation to English law of slander in respect to whether the matai holds "office" and words calculated to disparage him in that "office" constitute an exception to the general rule requiring proof of special damage has not been previously decided in this court according to Counsel for the Plaintiff. An undefended case does not give a good opportunity to express a view, as argument is limited. There was before me insufficient evidence as to the functions of the Plaintiff in his position of a matai of his village to allow me to properly consider the question. There was a suggestion that the alleged brawling would lower him in the esteem of young people to whom he should be setting an example. A father would be in the same position in relation to his children. At this stage I remain unconvinced that a matai is a holder of office or pursues a profession or calling as such for the purposes of the law of slander.

Assuming the words spoken were defamatory, there being no proof of special damage and no proof that the Plaintiffs position as a matai constitutes an exception to the rule requiring such proof, the action is dismissed and judgment is to be entered for the Defendant. As the Defendant was unrepresented there will be no order as to costs.