

HIGH COURT. Apia. 1957. 19, 28, February. ROTHWELL J.

Defamation - damages claimed for alleged defamatory statement published in newspaper - use of intemperate language - defence of justification and fair comment.

The Court must have regard to the language of a publication alleged to be defamatory, for intemperate language can be indicative of malice in the legal sense and may render unfair what would otherwise be fair comment; and where the defendant puts forward a defence of justification and fair comment (the Court having found that the statement objected to is true in fact and the comment thereon reasonable), the defendant is entitled to have a liberal view taken of his statement.

Merivale v. Carson (1887) 20 Q.B.D. at page 280 adopted.

Judgment for defendants.

Plaintiff, in person.  
Metcalf, for defendants.

Cur. adv. vult.

ROTHWELL J.: This is an action in which damages are claimed for an alleged defamatory statement published of the plaintiff in the Samoa Bulletin, a newspaper owned by the first defendant and edited by the second defendant. The words complained of are -

"Does it (the public) know that the enemy of foreign capital, Mr Gurau, is associated with a wholly foreign-owned firm which is operating in Samoa without a trading licence whatsoever?"

Following a preliminary submission I held that the words were capable of a defamatory meaning.

The plaintiff is a member of the Legislative Assembly of Western Samoa and evidence showed that in that capacity and in other activities he has been out-spoken from time to time in opposition to investments of foreign capital in trading ventures in Western Samoa. It is true that he says that his opposition is qualified in that it is confined to ventures which he feels are not in the best interest in the development of Western Samoa but he admits that he has never said in public that he would support the admission of foreign capital in ventures which he thought would be to the interest of Western Samoa.

The words complained of were contained in an editorial article published in the Samoa Bulletin after a debate in the Legislative Assembly on what was tantamount to a no confidence motion moved by the plaintiff and the subject matter of the debate was, without doubt, of great public interest.

The plaintiff is a Commission Agent of many years standing in Apia and holds agencies for a number of overseas firms. A firm by the name of Wm. Breckwoldt & Co., commenced business in Apia about 1936 and its business activities were suspended in 1939 in the outbreak of the Second World War by reason of the fact that it was owned by one Wm. Breckwoldt who was a resident of Hamburg in Germany. Its funds were impounded and were held in that state until 1954. In 1954 the plaintiff received a communication from Mr Wm. Breckwoldt asking him to revive the business previously operated in Apia, under the name of Wm. Breckwoldt & Co., if possible, and sending a Power of Attorney giving the plaintiff authority to make the application for any licence that might be required. Plaintiff approached the Attorney-General and the Collector of Customs with a view to obtaining the necessary licence under the provisions of the Revenue Ordinance 1929 and was informed by both these officers that a licence could not be issued to Wm. Breckwoldt & Co.,

under his own name, such a licence being said to be against the policy of the Administration. He was informed, however, that it would be perfectly legal for him as a licensed Commission Agent to operate in his own name as agent of Wm. Breckwoldt but unfortunately he failed to act in accordance with those instructions. In the Samoa Bulletin of 4th June 1954, an advertisement appears containing, inter alia, the following wording:

"Messrs Wm. Breckwoldt & Co. beg to advise that they have opened their Apia Branch under the management of Mr A.M. Gurnau

WM. BRECKWOLDT & CO.

P.O. Box 22  
RABAU

Millett Bldg.,  
NUVA

P.O. Box 47  
APIA

Cable address: BREWO"

Invoices were produced in evidence under the heading:

Wm. Breckwoldt & Co.,  
General Merchants and Commission Agents,  
P.O. Box 47,  
Apia, Samoa,

also at:

Rabaul, New Guinea,  
Suva, Fiji,  
Honolulu/P.S.I."

As late as last October after the publication complained of and before the issue of these proceedings, an advertisement appeared in the Pacific Islands Monthly, under a similar heading, as follows:-

WM. BRECKWOLDT & CO.  
CABLES: "BREWO"

RABAU, NUVA, APIA,  
New Guinea Millett Bldg. Western Samoa,  
P.O. Box 22 P.O. Box 22 P.O. Box 47 P.O. Box 47"

The plaintiff says that if a car is purchased in Western Samoa through this firm the purchaser pays for his car by a draft on his Apia account direct to Breckwoldt & Co., in Hamburg. The whole purchase price is paid in this way and the plaintiff is remunerated from Hamburg for his commission on the sale.

The alleged libel can be conveniently divided into two parts, the first being the reference to "the enemy of foreign capital" and the second referring to the association with a foreign owned firm. I shall deal first with the former part which contains the germ of opinion in the use of the word "enemy". The word "opponent" would have been a safer word for the defendants to use. Intemperate language can be indicative of malice in the legal sense and may render unfair, what would otherwise be fair comment. The defendant is however entitled to have a liberal view taken of his statement as was said by Lord Esher M.R. in Merivale v. Carson (1857) 20 QBD at page 280 -

"When you come to a question of fair comment you ought to be extremely liberal.....because it is a matter on which men's minds are moved, in which people we do know, entertain very strong feelings and if they use strong language every allowance should be made in their favour."

In my opinion the word "enemy" does not transcend the bounds of fairness.

The defendant raised pleas of justification and fair comment. I find facts as follows either by admission or on the evidence -

1. Plaintiff is opposed to foreign capital investment though he says his opposition is qualified.
2. The use of the word "enemy" is not so intemperate as to destroy the defence of fair comment.
3. The firm Wm. Breckwoldt & Co. is wholly owned by Wm Breckwoldt of Hamburg, Germany.
4. The plaintiff is associated with that firm as manager and agent.
5. The firm is operating in Western Samoa.
6. The firm has no trading licence authorising it to carry on in Western Samoa.

From these findings it follows that the second portion of the statement is true and in respect of that portion the defence of justification prevails. The first portion is true so far as it consists of fact, and is reasonable so far as it consists of comment.

In the result the pleas of fair comment and justification succeed and judgment must go for both defendants. As duplication of defendants entailed no extra work in preparation or otherwise the first defendant only will have its costs to be fixed by the Registrar.