

SAMOA NEWSPAPERS LTD v. SAMOA PRINTING & PUBLISHING CO LTD

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

Libel - newspaper publication - statements reflecting not on corporate entity but on officers of company - no liability.

A company cannot recover damages in respect of a libel reflecting not upon the company itself, but upon the actions of its directors and officials

South Hetton Coal Co v. North Eastern News Association (1894) 1 Q.B. 133 (C.A.) referred to.

Judgment for defendant.

CLAIM for damages for alleged libels contained in newspaper publication.

Plaintiff by its Managing Director, Rankin.
Metcalf, for defendant.

Cur. adv. vult.

MARSACK C.J.: This is a claim for £2,000 damages in respect of the publication in the "Samoa Bulletin", a weekly newspaper owned and operated by the defendant Company, of certain alleged libels contained in letters from a correspondent who signs himself "Citizen", appearing in the issues of the "Bulletin" of the 23rd December 1960 and the 6th January 1961. The statements of which complaint is made are set out in full in the Statement of Claim, and their publication is admitted by the defendant. The defendant pleads fair comment on a matter of public interest, and also with respect to certain of the statements that they do not refer to the plaintiff Company.

It is true that statements such as "This is not the first time this gentleman has fooled the Government" cannot possibly refer to an incorporated Company. Allegations of that character can refer only to an individual and in fact, they form part of the basis of a separate claim by Robert Frederick Rankin personally, heard by the Court at the same time as the claim now under consideration.

Of the statements set out in the pleadings, I can find none which refer to the Company as a Company, with the exception of those which, summarised, amount to an allegation that the plaintiff Company imported the block-making machinery into Western Samoa free of duty, and that the £150 admittedly paid to the Customs covered port and service charges only.

These allegations are admittedly false. Full disclosure was made to the Customs Department both before the actual importation and at the time of the arrival of the machinery in Apia; the duty was correctly assessed by the Customs and was paid. There was no justification in fact for the assertion of the "Bulletin" correspondent that the correct amount of duty would have been approximately £1,000.

It is clear that a company cannot recover damages in respect of a libel reflecting not upon the company itself, but upon the actions of its directors or officials. A defamatory statement referring to the business of a company, its financial standing, the quality of its products, or similar matters of that kind, may well form the basis of a successful action for damages. A company cannot, however, recover damages in respect of alleged misconduct of which the company, as a company, cannot be guilty; misconduct which must obviously be that of one of its officers.

The allegation complained of in the present proceedings, namely, that

the company avoided paying the proper duty on the machinery imported, cannot in any way reflect upon the financial stability or the general business reputation of the Company. If this is an allegation of dishonesty, and not merely one of mistake on the part of the Customs Department, it must be the dishonesty of an individual and not of the purely legal entity which is a company.

In the course of his evidence, the Managing Director of the Company said that the act which was alleged to "fool" the Government could only be the act of one of its officials.

The principles to be applied in determining claims for libel brought by incorporated companies, were discussed at some length in South Hetton Coal Co v. North Eastern News Association (1894) 1 Q.B. 133 (C.A.). At p. 139, Lord Esher M.R. says:

"With regard to a firm or company, it is impossible to lay down an exhaustive rule as to what would be a libel on them.
.....Statements may be made with regard to their mode of carrying on business such as to lead people of ordinary sense to the opinion that they conduct their business badly and inefficiently. If so, the law will be the same in their case as in that of an individual and the statement will be libellous."

Then in the same case Kay L.J. says at p. 145:

"If, for example, an individual, a private partnership, or a corporation, were carrying on a trading business and someone wrote and published an untrue statement that they were insolvent, or any other statement which might destroy their credit or paralyse their business, it is obvious that such a statement, if untrue, would be a libel."

Although the illustrations given by the Judges of appeal in the South Hetton case do not cover all the circumstances which might give a company the right to maintain an action for libel, I am of the opinion that they correctly set out the distinction which must be drawn between the statements reflecting on a company or corporation and statements reflecting on the conduct of its officers.

In such of the allegations in the Statement of Claim as concern the company, as opposed to the Managing Director of the company, I can find nothing derogatory to the business efficiency of the company and nothing which might tend to destroy its credit or paralyse its business. A false statement that a company has not paid the full Customs duty on machinery which it has imported from overseas, is not in my opinion defamatory of the company in such a way as to form a foundation for an action for damages. Aspersions cast upon the conduct of directors or officers of the company might well give a cause of action to the individuals concerned; and that aspect of the matter is dealt with in the judgment on the claim of Robert Frederick Rankin.

For these reasons, I hold that the plaintiff cannot succeed and there will be judgment for the defendant.

The plaintiff will pay defendant's costs £15.15.0 and disbursements.