

HOWELL v. SAMOA NEWSPAPERS LTD AND RANKIN

HIGH COURT. 1961. 9, 17, November. MARSACK C.J.

Libel -- newspaper publication -- words literally true -- presentation of words allowing unjustified inference -- imputation against character -- damages.

The fact that words in a newspaper article complained of as being libellous are literally true and about which justification is pleaded, is not necessarily conclusive against a plaintiff in a suit for libel. The form of presentation of such words may lead the ordinary reader to form an erroneous and untrue conclusion therefrom as to their meaning and the task of the Court is to ascertain the effect of the words, as they are presented, on the mind of the ordinary reader.

English and Scottish Co-operative Ltd v. Odhams Press [1940]  
1 All E.R. 1 referred to.

Observations made as to the award of damages in the general circumstances obtaining in a very small community.

Judgment for the Plaintiff.

CLAIM for damages in respect of an alleged libel of the Plaintiff in a newspaper publication.

Metcalf, for Plaintiff.  
 Phillips, for Defendants.

Cur adv. vult.

MARSACK C.J.: This is a claim for damages in respect of an alleged libel of the plaintiff contained in an article published in the newspaper Samoana of the 31st May 1961. The defendant Company is the proprietor of the newspaper Samoana, and the defendant R.F. Rankin is the Managing Editor. Plaintiff is a journalist, who at material times was the editor of the Samoa Bulletin, another newspaper published in Apia. The extract from the article of which complaint was made consists of two sentences. The second sentence was true in substance and in fact, and was not open to any innuendo which in my opinion would give rise to an action for damages. It is necessary therefore only to consider the first sentence which reads as follows:

"It is reported, however, that Bulletin editor Lee Howell, whose editorial activities have for some time caused concern among Government officials and others anxious to maintain unity and harmonious relations within the community, has been ordered to leave the Territory within the next few weeks."

The defendants plead justification, alleging that the statements made in the paragraph complained of are in fact true. It is conceded by the plaintiff that his editorial activities had for some time caused concern amongst Government officials, in that criticisms by him of the operation of the Police Force and of the methods adopted by the Health Department as regards poliomyelitis, had aroused annoyance and possibly anger in the Superintendent of Police and the Director of Health respectively. It is true also that the plaintiff had twelve days earlier received notice from the Immigration Officer that he was to leave the Territory within one month. The article in question, however, does more than merely state these two facts. It links them in such a way that the ordinary reader -- the equivalent in Samoa of the man on the Clapham omnibus -- would almost inevitably draw the inference that the plaintiff had been ordered to leave the Territory because of his journalistic attacks on the administration of the Government.

Moreover the criticism is not limited to the causing of concern among Government officials. It adds "and others anxious to maintain unity and harmonious relations within the community". The inference can hardly be avoided that the plaintiff, by causing concern among persons anxious to maintain unity and harmonious relations within the community, not only was failing to promote unity and harmonious relations himself, but was actively working against that desirable objective. In the statement of claim it is alleged that the paragraph complained of imputed discreditable, improper and subversive conduct to the plaintiff. The word "subversive" may be a little stronger than is justified by the words used; but in my view the words could properly be taken to mean that the plaintiff was guilty of conduct hampering the promotion of unity and harmonious relations within the community. Further, that it was on account of the Government's dissatisfaction with his conduct that he had been ordered to leave the Territory.

The evidence discloses that that was not the case. The notice from the Immigration Officer reads as follows:

"POLICE HEADQUARTERS

19th May, 1961

Mr R.T. Howell,  
Bulletin Office,  
MATAFELE.

Dear Sir,

A recent review of permits issued to overseas visitors indicated that your permit to reside in the territory expired on the 31st August 1960 and by oversight you were not approached earlier. I have been directed to inform you that you are to make arrangements to leave the territory within a month from today.

(sgd) A.L. Philipp  
Superintendent of Police & Prisons  
Immigration Officer"

The notice itself contains no indication that the order directed to plaintiff to leave Western Samoa was based upon any other ground than effluxion of the time for which his permit was granted.

Subsequent events bear out the contention that the notice from the Immigration Officer was not based upon "concern among Government officials and others" caused by the editorial activities of the plaintiff. Plaintiff was in fact in possession of an informal document signed by the Secretary to the Government giving him permission to remain in the Territory as long as he was employed by the Samoa Bulletin. The matter was later referred to Cabinet, which decided on the 30th June 1961 to extend the permit of the plaintiff for a further three months. In fact, he was still in Western Samoa at the date of hearing.

The position then is this. The statement that plaintiff's editorial activities had caused concern among Government officials is true, although the addition of the phrase "and others anxious to maintain unity and harmonious relations within the community" is in my opinion, unjustified in that it infers that plaintiff was working against the maintenance of unity and harmonious relations within the community. The statement that he had been ordered to leave the Territory within the next few weeks was true. The overall effect of the paragraph is, however, such that an ordinary reader would almost necessarily draw a conclusion that is not true; that is to say a conclusion that the plaintiff had acted against the maintenance

of unity and harmonious relations within the community, and that his journalistic activities against the Government had aroused the official ire to the extent that he was ordered to leave the country on that account.

The fact that words are literally true may not be conclusive against the plaintiff in a claim for libel. Circumstances may arise in which the form of presentation of the words complained of may lead the ordinary reader to form an erroneous conclusion as to the meaning of the words. That was the case in English and Scottish Co-operative Ltd v. Odhams Press /1940/ I All E.R. 1.

The task of the Court is to ascertain what will be the effect of the words, as they are presented, on the mind of the ordinary reader. In this present case, I find that the ordinary reader would conclude that plaintiff had been ordered to leave the Territory because of reprehensible activities against the Government. That is not true; it creates an imputation against the character of the plaintiff which is not justified by the facts; it therefore, in my opinion, constitutes a libel for which the plaintiff is entitled to recover damages.

In view of all the circumstances of the case, I cannot think that the injury caused to plaintiff's reputation by the publication of the paragraph in the Samoana is such as to justify the award of anything more than a small sum by way of damages. If in fact defendant had accepted the suggestion made by the plaintiff's solicitor, Mr Jackson, in his very temperately-worded letter of the 14th June, it is probable that no action would have been brought, or if it had, an award of purely nominal damages would have ensued. Defendant, however, rejected the opportunity given him to publish an apology and a retractation, and has thereby taken no action in mitigation of damages.

This Court has had occasion previously to point out that in a very small community such as the English-speaking section of the population in Western Samoa, publication of a libel in a local paper cannot be followed by an award of damages on the lavish scale which might be thought proper even in a country such as New Zealand.

Taking into consideration the facts as I have found them, and the general circumstances obtaining in the community, I assess the damages at £50 and accordingly give plaintiff judgment against both defendants for this amount together with the appropriate costs.