

E. A. DITCHFIELD, Appellant, vs. **J. J. DOSSEN**, **H. J. R. COOPER** and **S. J. DOSSEN**, transacting business under the name and style of the Cape Palmas Mahogany Company, Appellees.

[January Term, A. D. 1907.]

Appeal from the Court of Quarter Sessions and Common Pleas, Maryland County. Libel and Slander.

When an answer both denies the truthfulness of the complaint and sets up the plea of justification, it is evasive and contradictory, and is properly ruled out by the trial court.

Special damages may be recovered in actions for libel and slander when the tendency of the words is to impair plaintiff's reputation, to injure him in his trade or business or to impute to him the committing of an offence punishable by law ; such damages arise by inference, and need not be proved.

This case comes up to this court of last resort of legal judicature, for review, on a bill of exceptions taken to the rulings and judgment of the Court of Quarter Sessions and Common Pleas, Maryland County, James L. Cox presiding, at the August term of said court, A. D. 1906. Before animadverting upon the gist and essence of the case, the court desires to put upon record for the benefit of all concerned, citizens and aliens, that the organic and statutory laws of Liberia, in legal matters put every man on equal footing in securing to himself the rights that are guaranteed to him; rights guaranteed not only by the law of the land as such, but by international treaties with the nations of the world. And again, that the Supreme Court, in its integrity, representing the Republic in judicial matters, would not, in the least degree, act partially in any litigation between the citizens of the country and aliens residing in the country. Too much would be involved on the contrary for such a principle to be established in the country by the *dernier ressort* of justice.

It is very painful, however, to the court and country at large, that whenever there be a litigation between Liberians and aliens, the latter, suspecting the

integrity of the third co-ordinate branch of the government— the judiciary— begin at once to make representations to the representatives of their governments. This has happened in many instances within the last decade; and in each instance Liberia has been exonerated by those very governments and commended for its justice, equity and forensic knowledge. Aliens coming to Liberia to transact business, as it is supposed, under the laws of the country and treaty stipulations with other countries conclude either that the governing forces are ignorant, and consequently wicked, or that they desire to bring about international complications affecting the independence of the state. These facts are glaring to the court from previous experience. The court comes now to the case.

In carefully and legally reading and endeavoring to digest the voluminous record of the case, the court finds not only irregularities, but incongruities, which were needless and not necessary to prove or disprove the issue before the court below; hence this court is not inclined to take notice of those irregularities and incongruities, but will only discuss the salient points which effect the life of the case.

In the Court of Quarter Sessions and Common Pleas, Maryland County, August term, A. D. 1906, Messrs. J. J. Dossen, H. J. R. Cooper and S. J. Dossen, transacting business under the name and style of the Cape Palmas Mahogany Company, brought a suit against E. A. Ditchfield for damages on account of libel and slander, as appears in the complaint of the plaintiffs, now appellees.

The written instrument filed with the complaint, claimed by appellees to constitute the libel, reads as follows:

"J. J. Dossen, H. J. R. Cooper and S. J. Dossen, transacting business under the name and style of the Cape Palmas Mahogany Company, plaintiffs, complain that E. A. Ditchfield, defendant, wickedly intending to injure the plaintiffs heretofore, to wit, on the sixth day of January, 1906, did maliciously compose and publish of and concerning the plaintiffs a certain false, scandalous and defamatory libel; that is to say, that in a communication dated at Cape Palmas, January 6th, 1906, the following was published by the

defendant."

Sir : I have the honor to state for your information that Mr. D. D. Freeman, traveling agent for Messrs. Millers, Limited, called at my office re the alleged lost logs in course of shipment from Cavalla to one of Messrs. Woemann's steamers, during the latter part of 1904. He gave me to understand that he was here for the purpose of claiming money from the Cape Palmas Mahogany Company and H. Cooper & Son, who are the principals with Justice J. J. Dossen, the Company, and also to satisfy both Dossen and Cooper that the amount claimed from the underwriters by Messrs. Millers, was remitted, less their commission, which he, Mr. Freeman, finds to be a fraud, and that no logs were ever attempted to be shipped or lost. The claim on Messrs. Millers was for twenty (20) logs and Messrs. Jantzen and Thormahlen, Hamburg, twenty (20), making total 40 logs in all. Information reached me yesterday that an attempt had been made to secure and ship five logs on the beach at Blemalow near Bleiron, by the Cape Palmas Mahogany Company, who applied to Messrs. Woodins, Messrs. Elder Dempster & Company's agent here, for the "Congo" to call and take off the timber which I have stopped. I have written to Mr. H. M. Hozier, secretary for Lloyds, to see Messrs. Millers and the underwriters' brokers, Messrs. Wakham Bros., London, also the German underwriters, and obtain all papers to enable proceedings to be carried out re the claim made and the alleged loss.

I have the honor to be, Sir,
Your humble and obedient servant,
E. A. DITCHFIELD.
Captain Braithwaite Wallis,
His Britannic Majesty's Consul,
Monrovia, Liberia.

And further, taken from plaintiff's (now appellee's) complaint, aside from the instrument constituting the libel, the appellees complain in the following terms:

"And the said plaintiffs further complain that for that the said E. A. Ditchfield, defendant, wickedly intending to injure the plaintiffs heretofore, to wit, between the first day of November, 1905, and the thirteenth day of May, 1906,

in certain discourses which he then had of and concerning the plaintiffs, did in the presence and hearing of divers persons maliciously and falsely speak and publish of and concerning the plaintiffs the following false, slanderous and defamatory words; that is to say, that the plaintiffs made a claim upon the insurance company for the loss of twenty logs, which twenty logs the plaintiffs had already made the Cavalla natives pay them for; thereby meaning that the plaintiffs' claim against the insurance company was false and fraudulent, and thereby meaning that the plaintiffs have received money under false pretence, by means of which the plaintiffs have been brought into public scandal and disgrace, and their business reputation greatly injured as well as their character, fame and good name."

The complaint of plaintiffs, now appellees, setting forth the offence alleged to have been committed against them by the defendant, now appellant, embracing the instrument of libel, was in the court below rebutted by the defendant's answer, upon the ground, first, "that the complaint is ambiguous in that it charges the said defendant with two separate forms of action; that is to say, libel and slander; which is contrary to the rule of pleadings. The said plaintiff in said complaint ought to have chosen one particular form of action against the said defendant to enable him to make a proper defence to same," etc.

Secondly, he avers that his communication to the British Consul comes under the head of all those communications that are made *bona fide* in the performance of a duty, whether public or private, or with a fair and reasonable purpose of protecting the interests of the party to whom they are made, or of the interests of both in a matter in which they are mutually interested; such communications are held to be excusable in law from the consequences which may follow.

As to this last point, the evidence in this case fails to show any relationship of the defendant, now appellant, with the British Consul thereby excusing him from writing, publishing and circulating the libellous letter constituting the grounds of the complaint.

With reference to the point raised as to the incapacity of a non-incorporated

company to sue for a wrong done to it or an injury sustained, this court is of opinion that any association of a number of individuals, formed for the purpose of carrying on some legitimate business, is as much protected by law as other associations, and as such is also liable for breach of contract or other wrongs; for only when chartered by Government are such associations known as corporations.

There are several questions raised in the pleadings, many of which do not tend to establish the truth of the allegations of the plaintiffs, nor the denials of the defendant, nor of the law assumed, and which consequently this court need not pass upon, and will therefore address itself to such points only as are calculated to lead to a just conclusion of the question.

It is alleged that the court erred in ruling out the defendant's answer because of its insufficiency. This leads us to consider the statute laws governing complaints, answers and replies. Carefully examining the answer in this case, it is clear to the mind of the court that the answer is not a sufficient answer to the plaintiffs' complaint; because an answer should contain a distinct and triable issue and should not be so evasive as to furnish no triable issue. For this reason the court below did not err in ruling out said answer, and hence with it all subsequent pleadings of the defendant. And such rulings are in harmony with the statute laws of this Republic, a citation from which, bearing on the point in issue, we quote: "The defendant may file an answer to the complaint, setting forth new facts to justify or excuse his conduct. Every such answer must be in writing and must contain a distinct, intelligent and sufficient answer to the complaint or to such parts thereof as it professes to answer, or judgment shall be given for the plaintiff." (Lib. Stat. Bk. I, p. 44, secs. 3 and 4.)

In this case the answer is evasive and contradictory, in that it denies the truthfulness of the complaint and at the same time sets up the plea of justification, which is a plea in bar. Hence it was the duty of the court below to rule out the answer and subsequent pleadings of the defendant and submit the questions of fact to the determination of the jury.

As to the testimony in the case the record shows that the plaintiffs, following the rules of the statute laws of Liberia, served due notice upon the defendant,

requiring him to produce at the trial the counterpart original of the libellous letter, said to be in his possession, which the defendant failed to produce, or to prove that it was not in his possession; which failure the statute laws of Liberia do not only construe as an admission of the authority and truthfulness of the document sought to be proved, but also opens the door for the plaintiff to put in evidence a copy of said letter, as well as to bring in witnesses to prove its contents. (Lib. Stat. Bk. 1, p. 56, secs. 27, 28, 29 and 30; Odgers on Libel and Slander, p. 433 ; Taylor on Evidence, Vol. 1, sects. 440 and 441; Decisions of the Supreme Court of the Republic of Liberia in the case of J. C. Lowrie vs. Crusoe Brothers; Decisions of the Supreme Court of the United States of America, Book VI, p. 141, Book XXII, p. 338.)

The evidence of witness Ellegor states that the defendant told him that the libel laid in the complaint contains the exact words which he had written to the British Consul at Monrovia, which testimony proves conclusively the publication of the libel, by the defendant's own admission. And this evidence, in no wise rebutted by the defendant, beyond doubt caused the jury to find a verdict for the plaintiffs.

There is doubtless a difference between general and special damages. The former are such as the law will presume to be the material or probable consequence growing out of the defendant's conduct. They arise by inference of law, and need not therefore be proved by evidence. Such damages may be recovered when the tendency of the words is to impair the plaintiff's reputation, to injure him in his trade or business, or to impute to him the committing of an offence punishable by law. The jury should carefully consider the whole of the words complained of and give the plaintiff such damages as in their opinion will fairly compensate him for the injury done to his reputation thereby. They will, of course, be influenced by the circumstances attending the publication; by the character of the defamatory words; by their falseness, by the malice displayed by the defendant or the provocation given by the plaintiff. They may also faithfully take into their consideration the rank and position in society of the parties; the mode of publication selected; the extent and long continuance of the circulation given to the defamatory words ; the tardiness or inadequacy, or entire absence, of any apology; the fact that the defendant could have easily ascertained that the charge he made was false, etc. "Where the words affect a trader in the way of his trade, figures may be

laid before the jury showing that his business has fallen off in consequence thereof ; even if no evidence be offered by the plaintiff as to damages, the jury are in no way bound to give nominal damages only; they may read the libel and give such substantial damages as will compensate the plaintiff for such defamation." "And although a plaintiff, at the trial, may fail to prove special damages, yet he may recover general damages." (Odgers on Libel and Slander, pp. 220 and 221.)

In the case under our consideration we find the defamatory words contained in both the libel and slander are words which the law regards as actionable *per se*, and by all the circumstances surrounding the publication of them and the conduct of the defendant in the premises, they fall within the rule of law just above quoted. In this case the jury, having been lawfully sworn to try the facts and assess the damages, if any, returned a verdict in favor of the plaintiffs, awarding them the sum of fifteen thousand dollars damages. To this verdict, and the judgment rendered thereon, the defendant filed a bill of exceptions, which brings the cause before this court.

Looking over said bill of exceptions, filed by the defendant, in clause eighteen the defendant says that he offered a motion for a new trial, for legal causes therein assigned. In this motion it is contended that the verdict is against the weight of evidence in the case. As to this point this court says, according to the statute laws of Liberia the jury is the judge of the credibility and effect of the evidence; and further, the court may, in the exercise of its own discretion, allow the jury to be separated even before coming to a verdict.

Surveying this entire case, this court fails to see that the trial has departed from the law, justice and truth of the case. But fearing lest the jury may have been in measure influenced by passion, considering the aggravation of this case, in increasing the damages to fifteen thousand dollars, this court therefore alters the judgment of the court below, so far as it refers to the amount of damages, and according to the statute laws of this Republic proceeds to give the judgment which in its opinion the court below should have given.

This court therefore adjudges that the plaintiffs, now appellees, recover from

the defendant, now appellant, as their damages, the sum of ten thousand and one hundred dollars, and all legal costs incurred in this action. And the clerk of this court is hereby directed to issue a mandate to the court below, informing it of this decision.