

1953

TORTS-DEFAMATION-RIGHT OF CORPORATION TO SUE FOR LIBELOUS WORDS CONCERNING ITS EMPLOYEES

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Recommended Citation

Chester F. Relyea, *TORTS-DEFAMATION-RIGHT OF CORPORATION TO SUE FOR LIBELOUS WORDS CONCERNING ITS EMPLOYEES*, 51 MICH. L. REV. 611 (1953).

Available at: <https://repository.law.umich.edu/mlr/vol51/iss4/20>

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TORTS—DEFAMATION—RIGHT OF CORPORATION TO SUE FOR LIBELOUS WORDS CONCERNING ITS EMPLOYEES—The plaintiff corporation owns and operates a fashionable clothing store. The defendants are authors of a book which stated that some of the corporation's models and sales girls were prostitutes and many of its male designers and salesmen were homosexuals. A number from both groups were said to have been "imported." On defendants' motion to dismiss the complaint for failure to state a cause of action in libel, the court denied the motion. *Held*: even without an allegation of special damages, it could not be said as a matter of law that a corporation could not be directly damaged in a business way by a publication that it employs seriously undesirable personnel. *Neiman-Marcus Co. v. Lait*, (D.C. N.Y. 1952) 107 F. Supp. 96.

It is generally recognized that although a corporation does not have a reputation in a personal sense, it does have prestige and a business reputation which may be injured by defamatory language if such language is aimed at the corporation's method of doing business, or injures its credit or business reputation in a pecuniary way.¹ This test has therefore been used in place of the hatred,

¹ These annotations collect many of the cases: 86 A.L.R. 442 (1933), which supplements 52 A.L.R. 1199 (1928), and 37 A.L.R. 1348 (1925) which considers only banking corporations. See also 3 TORTS RESTATEMENT §561(1) (1938); ODGERS, LIBEL AND SLANDER, 6th ed., 477 (1929); NEWELL, SLANDER AND LIBEL, 4th ed., 343 (1924).

contempt and ridicule formula applied to individuals. Almost without exception, both American and English courts hold that a corporation may sue for libel without alleging or proving special damages² (i.e., "libel per se") if the words are such as would necessarily or naturally cause pecuniary loss to the corporation.³ It is often said, however, that a corporation cannot sue for words imputing to it the crimes of murder, incest, adultery or corruption⁴ because a corporation cannot be guilty of such peculiarly personal crimes.⁵ Another limitation upon a corporation's right to sue for defamation is the doctrine that the reputation of a corporation does not depend upon the personal reputation of its officers, agents or stockholders, and that therefore a corporation is not defamed (without the allegation and proof of special damages) by defamatory words concerning these individuals unless such words also reflect discredit on the method by which the corporation conducts its business.⁶ Thus it was held not to be libel per se as to a newspaper corporation where a publication discussing that newspaper's editorials alleged that the editor of the newspaper was a hypo-

² This rule applies to non-business corporations. See *Aetna Life Ins. Co. v. Mutual Benefit Health & Accident Assn.*, (8th Cir. 1936) 82 F. (2d) 115; *New York Society for the Suppression of Vice v. MacFadden Publications, Inc.*, 260 N.Y. 167, 183 N.E. 284 (1932); 3 *TORTS RESTATEMENT* §561(2) (1938). But it has been held that a membership corporation which by law is not permitted to engage in business must allege and prove special damages in order to sue for slander. *Electrical Board of Trade of New York, Inc. v. Sheehan*, 214 App. Div. 712, 210 N.Y.S. 127 (1925). Municipal corporations cannot sue a citizen for libel at all because of the possible threat to freedom of speech. See *City of Chicago v. Tribune Co.*, 307 Ill. 595, 139 N.E. 86 (1923); *City of Albany v. Meyer*, 99 Cal. App. 651, 279 P. 213 (1929); 3 *TORTS RESTATEMENT* §561 (1938) (expressing "no opinion" on this subject).

³ These cases are included in the annotations suggested in note 1 supra. See also, *Aetna Life Insurance Co. v. Mutual Benefit Health & Accident Assn.*, note 2 supra; *Pullman Standard Car Mfg. Co. v. Local Union No. 2928 of United Steelworkers of America*, (7th Cir. 1945) 152 F. (2d) 493; *Reporters' Assn. of America v. Sun Printing and Publishing Assn.*, 186 N.Y. 437, 79 N.E. 710 (1906); *South Hetton Coal Co. v. North Eastern News Assn.*, [1894] 1 Q.B. 133; *D. & L. Caterers, Ltd.*, and *Jackson v. D'Ajou*, [1945] 1 K.B. 364 (slander); 3 *TORTS RESTATEMENT*, comment to §561(1) (1938).

⁴ As to the ambiguity of "corruption" here, however, see the following cases where defamatory statements were held to be actionable per se as to a corporation: *Rosner v. Globe Valve Corp.*, 193 Misc. 351, 83 N.Y.S. (2d) 496 (1948), *affd.*, 275 App. Div. 703, 87 N.Y.S. (2d) 524 (1949) (slander: unlawful tie-in sales and engaging in dishonest and sharp business practices); *Union Associated Press v. Heath*, 49 App. Div. 247, 63 N.Y.S. 96 (1900) (libel: stealing news by tapping wires of another news service); *D. & L. Caterers, Ltd.*, and *Jackson v. D'Ajou*, note 3 supra (slander: dealing unlawfully in the black market); *Finnish Temperance Soc. Sovittaja v. Finnish Socialistic Publishing Co.*, 238 Mass. 345, 130 N.E. 845 (1921) (libel: making criminal use of its property and grossly mismanaging its corporate affairs).

⁵ *Pollock, C. B.*, in *Metropolitan Saloon Omnibus Co., Ltd. v. Hawkins*, 4 H. & N. 87 at 90, 157 Eng. Rep. 769 at 770 (1859). See *Kemble & Mills of Pittsburgh v. Kaighn*, 131 App. Div. 63, 115 N.Y.S. 809 (1909) (bribery of employee of another business); *Mayor, &c., of Manchester v. Williams*, [1891] 1 Q.B. 94 (bribery and corruption).

⁶ For cases, see annotation in 58 A.L.R. 1233 (1929). See *Life Printing & Publishing Co., Inc. v. Field*, 324 Ill. App. 254, 58 N.E. (2d) 307 (1944); *Hapgoods v. Crawford*, 125 App. Div. 856, 110 N.Y.S. 122 (1908); 3 *TORTS RESTATEMENT*, comment to §561(1) (1938).

crite, a drunkard and a gambler;⁷ but where the defamatory allegation was that the officers of a corporation were a "bunch of crooks," the court held this to be libel per se.⁸ The court in the principal case relied primarily on a decision by the Kentucky Supreme Court⁹ which held as libelous per se a statement charging a corporation with employing a Negro foreman to supervise white woman. Ignoring value judgments, it would seem that both this case and the principal case present strong emotional bases for relief. It appears, however, that these two cases represent an extension of the law of libel as applied to corporate plaintiffs in that not only do the defamatory words refer primarily to merely personal characteristics of employees, but also they relate only indirectly to the corporation's method of doing business and not at all to its credit.

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⁷ *Adirondack Record, Inc. v. Lawrence*, 202 App. Div. 251, 195 N.Y.S. 627 (1922). See *Memphis Telephone Co. v. Cumberland Tel. & Tel. Co.*, (6th Cir. 1906) 145 F. 904 (promoters of corporation trying to unload a "wad" of securities on the "dear public," including an issue of bonds worth twice the value of the corporation).

⁸ *De Mankowski v. Ship Channel Development Co.*, (Tex. Civ. App. 1927) 300 S.W. 118.

⁹ *Axton Fisher Tobacco Co. v. Evening Post Co.*, 169 Ky. 64, 183 S.W. 269 (1916).