

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Citizens' Life Assurance Company, Limited, v. Brown, from the Supreme Court of New South Wales; delivered the 6th May 1904.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD DAVEY.

LORD LINDLEY.

SIR ARTHUR WILSON.

[*Delivered by Lord Lindley.*]

The question raised by this Appeal is whether a Limited Company is responsible for a libel published by one of its officers. The action has been tried three times. The Plaintiff obtained a verdict and judgment every time, with damages which have been every time increased. Counsel for the Company feel that it would be useless to send the case back for another trial, and they therefore ask that the last verdict and judgment should be set aside and judgment entered for the Company.

The facts are shortly as follows :—

The Appellants are an Assurance Company incorporated with limited liability and carrying on business in New South Wales. From January 1900 until June 1900 the Respondent Brown (the Plaintiff in the action) was in the service of the Company as an insurance agent at Tamworth. Brown was introduced to the Company by Fitzpatrick, who was employed by the Company as a Superintendent of Agencies under

the terms of an Agreement dated the 12th June 1899. His duties will be referred to presently. Shortly after leaving the employment of the Company, namely, in the month of July, Brown entered the service of a rival Company called the Standard Life Association, and while in the service of such Company Brown visited divers of the policy holders in the Appellant Company, and endeavoured to induce such policy holders to leave the Appellant Company and to insure in the Standard Life Association, and for the purpose of bringing about such a result made statements derogatory to the Appellant Company. Fitzpatrick learned that such statements had been and were being made, and he published the libel complained of. It was a circular letter sent to several persons insured in the Appellant Company in answer to inquiries made by them. It was plainly defamatory. Some statements contained in it were not true, and Fitzpatrick knew they were not true. There was evidence of express malice on the part of Fitzpatrick. There is no note of the learned Judge's summing up, but the jury found a verdict for the Plaintiff, gave him 650*l.* damages, and found that "Fitzpatrick was acting in publishing the libel within the scope of his employment and in the course of his employment." Judgment was accordingly entered for the Plaintiff for this sum and costs; and the Supreme Court refused to set aside the verdict and enter judgment for the Defendants and refused to grant a new trial. Hence the present Appeal.

Counsel for the Appellants contended, first, that the verdict was wrong in finding that Fitzpatrick acted in publishing the libel within the scope and in the course of his employment, and, secondly, that even if he did, yet the malice with which he wrote it cannot be imputed to the

Company. In support of this proposition reliance was placed on the well-known judgment of the late Lord Bramwell in *Abrath v. North-Eastern Railway Company* (11 A.C. 247; see p. 250).

It will be convenient to dispose of the second question first. There is no doubt that Lord Bramwell held strongly to his opinion that a corporation was incapable of malice or motive, and that an action for malicious prosecution could not be maintained against a company. Lord Cranworth in *Addie v. Western Bank of Scotland* (L. R. 1 H. L. Sc. 145) had expressed a similar opinion as to the liability of corporations for frauds. But these opinions have not prevailed, and their Lordships are not prepared to give effect to them. If it is once granted that corporations are for civil purposes to be regarded as persons, *i.e.*, as principals acting by agents and servants, it is difficult to see why the ordinary doctrines of agency, and of master and servant, are not to be applied to corporations as well as to ordinary individuals. These doctrines have been so applied in a great variety of cases, in questions arising out of contract, and in questions arising out of torts and frauds; and to apply them to one class of libels and to deny their application to another class of libels on the ground that malice cannot be imputed to a body corporate appears to their Lordships to be contrary to sound legal principles. To talk about imputing malice to corporations appears to their Lordships to introduce metaphysical subtleties which are needless and fallacious. Their Lordships concur with the view of the Acting Chief Justice in this case that if Fitzpatrick published the libel complained of in the course of his employment, the Company are liable for it on ordinary principles of agency. Fitzpatrick's letter, although

published on a privileged occasion, was not itself privileged; and not being privileged the letter must be treated as any other libel written and published by an officer of the Company.

There remains, however, the important question whether there was evidence on which the jury could properly find that the publication of the letter was within the scope of Fitzpatrick's authority or, what is the same thing, within the scope of his employment. He was engaged by a written agreement; he was a superintendent; he was to act under instructions given to him by properly authorised officers and in accordance with the rules and regulations of the Company. He was to devote his whole time to furthering the Company's business. He was to receive and pay money, keep proper accounts, and to supervise various agencies under him. He was to be paid a salary of 5*l.* a week and a commission on policies procured by him. The written agreement did not state more precisely what his duties were. Witnesses were called to throw further light upon the subject. Mr. Eedy, the General Secretary of the Company, said that if policy holders wanted to know why the Company did not prosecute Brown for his statements about the Company, Fitzpatrick should have communicated that matter to the Head Office before taking action. "It would have been his duty." Another witness said his duty was to appoint and look after agents and "to stand as an intermediate between the assured and the office. His authority is to secure business and save business and to visit policy holders whose policies have lapsed or are likely to lapse. In the district itself there is no one above him." It is clear that the scope of Fitzpatrick's authority and employment was wide and by no means clearly defined. In

considering the scope of his authority and employment their Lordships agree with the Acting Chief Justice in thinking that the Jury were entitled to act on their own knowledge of Colonial business and habits. They were entitled to consider the necessities of the case arising from the size and nature of the district placed under Fitzpatrick's supervision and what would naturally be done in the Colony by a person in his position. He had no actual authority express or implied to write libels nor to do anything legally wrong; but it is not necessary that he should have had any such authority in order to render the Company liable for his acts. The law upon this subject cannot be better expressed than it was by the Acting Chief Justice in this case. He said "although the particular act which gives the cause of action may not be authorised, still if the act is done in the course of employment which is authorised, then the master is liable for the act of his servant." This doctrine has been approved and acted upon by this Board (in *Mackay v. Commercial Bank of New Brunswick*, L.R. 5 P.C. 394; *Swire v. Francis*, L.R. 3 A.C. 106), and the doctrine is as applicable to incorporated companies as to individuals. All doubt on this question was removed by the decision of the Court of Exchequer Chamber in *Barwick v. English Joint Stock Bank*, L.R. 2 Ex. 259, which is the leading case on the subject. It was distinctly approved by Lord Selborne in the House of Lords in *Houldsworth v. City of Glasgow Bank*, L.R. 5 A.C. at p. 326, and has been followed in numerous other cases.

Such being the evidence their Lordships cannot judicially hold that there was no evidence to warrant the jury in finding that it was within the scope of Fitzpatrick's authority and employment to write to policy holders in order to counteract the mischief which Brown was doing

to the business of the Company; and although Fitzpatrick went too far and made charges against Brown which he knew were not true, their Lordships are of opinion that the Company are legally responsible for what he wrote.

As regards the verdict being against the weight of evidence, it must be borne in mind that Mr. Justice Simpson, who tried the last action, was satisfied with the verdict, and he reports that the Judges who tried the two previous actions were also satisfied with the verdicts given in them. Their Lordships see no reason for thinking the verdict wrong on the evidence adduced.

Their Lordships will therefore humbly advise His Majesty to dismiss the Appeal, and the Appellant Company must pay the costs.

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