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## Defamation of Corporations

Louis J. Bloomfield\*

SINCE THE SIXTEENTH CENTURY courts of law have held that an individual may bring an action for damages for libel or slander. When corporations came into their own, occasions arose where the question of a corporation's right to bring suit for libel or slander had to be decided. The first cases centered discussion on whether a corporation could sue on the basis of similarity to a natural person (an individual) or to an artificial person (an entity). While courts long have made a distinction between the artificial and the natural person, the law has been established that, like an individual, a corporation may sue for libel and slander. Even though the law is well settled that a corporation may bring suit for defamation, the law applicable to corporations is somewhat different from that applicable to individuals.

One of the first cases dealing with the corporation's right to sue when defamed was *Trenton Mutual Life and Fire Insurance Company v. Perrine*,<sup>1</sup> decided in 1852. Here the court said that an action would lie for libel and slander of a corporation. The decision in this case was that a right of action would accrue to a corporation whose business was affected or whose property was injured by the defamation of one of its officers. While this rule has been modified by later decisions, there is no doubt that the court set a precedent (in this case of first impression) that a corporation could be defamed and could bring suit thereon for its injury.

Since the time of the early cases courts have always maintained the difference between the artificial person and the natural person. It is well settled that a corporation has no reputation in the personal sense of the word.<sup>2</sup> Therefore, unlike an individual, a corporation would have no right of action for im-

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<sup>1</sup> *Trenton Mutual Life and Fire Insurance Co. v. Perrine*, 23 N. J. L. 402, 57 Am. Dec. 400 (1852).

<sup>2</sup> *Erick Bowman Remedy Co. v. Jensen Salsbery Laboratories*, 17 F. 2d 255 (8th Cir. 1926). See, generally, Prosser, *Law of Torts* 578 (2d ed. 1955); 33 Am. Jur. 183 (1941); Anno., 52 A. L. R. 1199 (1928); 3 Oleck, *Modern Corporation Law*, Sec. 1688 (1959).

puting to it the commission of such a crime as murder, assault or adultery.<sup>3</sup> While the individual has a reputation in the personal sense, which can be defamed, so a corporation has a reputation in the business sense, which is protected by law.<sup>4</sup>

The courts have recognized that defamation of a corporation is actionable because a corporation may have prestige and standing in the business world. A corporation business depends on its good name in order to attract customers and to achieve the purposes for which it was created. Therefore, any false publications which would tend to drive away customers or taint the name of the corporation have been held to be actionable.

Where the honesty of the corporation has been attacked, that attack is actionable. When a newspaper charged an insurance company with dishonest conduct in the sale of its stock, the court held that that was libel per se.<sup>5</sup> It is libelous to publish an article accusing the officers of a corporation of mismanagement or of swindling the public,<sup>6</sup> or charging the corporation with fraud or dishonest practices.<sup>7</sup>

Another kind of libel or slander which tends to cast an aspersion on the honesty of a corporation is the false accusation that a corporation has committed a crime or violated some law. While a corporation cannot be libeled by accusing it of murder or rape, it has been held that a charge that a mining company violated a law with reference to the use of safety equipment in its mines was actionable.<sup>8</sup> When a school was charged with permitting and encouraging immoral practices among its students, that charge was held to be actionable.<sup>9</sup>

It is also well settled that a corporation may maintain an action in libel or slander for publications attacking its credit. Thus, where an insurance company published a statement which said that another insurance company was insolvent, the publi-

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<sup>3</sup> National Refining Co. v. Benzo Gas Motor Fuel Co., 20 F. 2d 763 (8th Cir. 1927).

<sup>4</sup> Pullman Standard Car Mfg. Co. v. Local Union No. 2928 of USW, 152 F. 2d 493 (7th Cir. 1945); Brayton v. Crowell-Collier, 205 F. 2d 644 (2d Cir. 1953).

<sup>5</sup> Farmers Life Insurance Co. v. Wehrle, 63 Colo. 279, 165 P. 763 (1917).

<sup>6</sup> Trenton Mutual Life and Fire Insurance Co. v. Perrine, *supra* note 1.

<sup>7</sup> Dupont Engineering Co. v. Nashville Banner Publishing Co., 13 F. 2d 186 (D. C. Tenn. 1925); Venn v. Tennessean Newspapers, 201 F. Supp. 47 (D. C. Tenn. 1962).

<sup>8</sup> Willfred Coal Co. v. Sapp, 193 Ill. App. 400 (1915).

<sup>9</sup> St. James Military Academy v. Gaiser, 125 Mo. 517, 28 S. W. 851 (1894).

cation was actionable.<sup>10</sup> If it is said about a corporation that it has passed into bankruptcy, that is libelous.<sup>11</sup> A Pennsylvania court has held that it is slanderous to say that an insurance company is insolvent or bankrupt and that its policyholders will lose everything.<sup>12</sup> It is beyond question that a corporation must be protected against defamation concerning its credit or property.<sup>13</sup>

The general rule has also been established that a corporation may be defamed by false statements as to its efficiency or other business character. This would include misrepresentations as to the character or condition of its product and statements which would affect the confidence of the public in the corporation and would drive away its customers. Many cases have held that a corporation has the right to sue for defamation that relates to its management or credit and injures its business or property.<sup>14</sup> In a well known case the defendant published an analysis of the plaintiff's product (an abortion remedy for livestock) with a statement that people like to be fooled.<sup>15</sup> While the plaintiff failed here, because there were no special damages alleged and proved, the court inferred that this type of publication was libelous if damage resulted.

A great deal of discussion has taken place about libel and slander of *individuals* who are connected with the affected corporation. Two questions have been posed in this respect: Can a corporation be defamed by defamation directed at an individual

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<sup>10</sup> *Aetna Life Insurance Co. v. Mutual Benefit Health & Accident Assn.*, 82 F. 2d 115 (8th Cir. 1936).

<sup>11</sup> *Moore & Munger Co. v. Motor Trades Publishing Co.*, 170 App. Div. 779, 155 N. Y. Supp. 929 (1915); *Rudawsky v. Northwestern Jobbers Credit Bureau*, 235 N. W. 523 (Minn. 1931).

<sup>12</sup> *Temperance Mutual Benevolent Assn. v. Schweinhard*, 3 Pa. Co. Ct. 353 (1887).

<sup>13</sup> *Den Norske Ameriekalinje Acterselskabet v. Sun Printing & Pub. Co.*, 226 N. Y. 17, 122 N. E. 463 (1919); *Security Benefit Assn. v. Daily News*, 299 F. 445 (8th Cir. 1924).

<sup>14</sup> *Reporter's Assn. of America v. Sun Printing and Publishing Assn.*, 186 N. Y. 437, 79 N. E. 710 (1906); *Peoples United States Bank v. Goodwin*, 167 Mo. App. 211, 149 S. W. 1148 (1912); *American Book Co. v. Gates*, 85 F. 729 (S. D. Iowa 1898); *Ohio & Mississippi Railway Co. v. Press Publishing Co.*, 48 F. 206 (S. D. N. Y. 1891); *Axton-Fisher Tobacco Co. v. Evening Post Co.*, 169 Ky. 64, 183 S. W. 269 (1916); *Gross Coal Co. v. Rose*, 126 Wis. 24, 105 N. W. 225 (1905); *Life Printing & Publishing Co. v. Field*, 327 Ill. App. 486, 64 N. E. 2d 383 (1946); *Brayton v. Crowell-Collier Publishing Co.*, 205 F. 2d 644 (2d Cir. 1953); *National Refining Co. v. Benzo Gas Motor Fuel Co.*, *supra* note 3; *Hornell Broadcasting v. Nielsen*, 185 N. Y. S. 2d 945 (App. Div. 1959).

<sup>15</sup> *Erick Bowman Remedy Co. v. Jensen Salsbery Laboratories*, *supra* note 2.

member?; and Can an individual be defamed by defamation directed at a corporation? These problems center around cases where libel and slander have been directed at employees, officers, management, and stockholders of the corporation. Generally, the law is that one who is not himself defamed cannot recover for a defamation of his corporation, and the corporation cannot recover for a defamation directed at an individual member.

If the alleged defamatory statement refers only to the corporation, an officer or stockholder ordinarily has no right to recover individually.<sup>16</sup> Thus, even if the individual thinks that he has been injured by the libel of the corporation, he cannot recover unless he can show that he himself thereby also was libeled.<sup>17</sup> It is essential to the right of action that the plaintiff be at least one of the objects of the libel or slander.<sup>18</sup> In a case where the chief stockholder and officer was accused of being an arsonist, the court said that the right of action is personal, and lies only in the person who is the object of the slander.<sup>19</sup> Therefore, the corporation cannot sue when the slander is directed at a stockholder or officer, and not at the business of the corporation.<sup>20</sup> Where the publication relates directly to an officer or employee of a corporation in his private or personal affairs, the corporation with which he is involved cannot bring action.<sup>21</sup> The right of action then belongs to the individual and not to the corporation. A recent decision has said that words criticizing the corporation, without more, do not defame the individuals connected with it.<sup>22</sup>

While the cases just cited might lead us to believe that individual members or corporations, each have no cause of action when defamations are directed at the other, this is not necessarily true. An early case said that a corporation might recover for a libel or slander directed at its officers, stockholders, or

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<sup>16</sup> Gilbert Shoe Co., Inc. v. Rumpf Publishing Co., 112 F. Supp. 228 (D. Mass. 1953).

<sup>17</sup> *Ibid.*

<sup>18</sup> *Id.*

<sup>19</sup> Brayton v. Cleveland Special Police Co., 63 Ohio State 83, 57 N. E. 1085 (1900); Golden North Airways v. Tanana, 218 F. 2d 612 (9th Cir. 1955).

<sup>20</sup> *Ibid.*

<sup>21</sup> Life Printing & Publishing Co., Inc. v. Field, *supra* note 14.

<sup>22</sup> Volomino v. Messenger Publishing Co., and Blasko v. Messinger Publishing Co., 410 Pa. 611, 189 A. 2d 873 (1963).

servants.<sup>23</sup> However, this rule has been modified by subsequent decisions, so that recovery can be had only in special situations. It has been held that there can be recovery by a corporation where slanderous words spoken of an officer were spoken in direct relation to the corporation's trade or business.<sup>24</sup> Therefore, it might be said that where the words are such as might defame both the individual and the corporation (even though not directed at both), each might have a cause of action. In another case, where the libel was as to a certain corporation, the individual member showed that he completely controlled the corporation and that readers could understand the libel to charge him as well as the corporation. The court here said that it was a jury question whether the libel was of such a nature as to defame the individual as well as the corporation.<sup>25</sup>

Other cases have held that a corporation may recover for a defamation of its employees, officers, or stockholders whenever it has suffered a special damage as a result, and that the reverse also is true. In a case where a magazine allegedly libeled a corporation, the court said that no action by a stockholder would lie unless special damages were alleged and proved.<sup>26</sup> A corporation cannot recover for the slander of an officer when the slander only has to do with his personal reputation. However, where the slander reflects on his business integrity, and thus on that of the entire management of the corporation, it necessarily injures the business and the reputation for business integrity of the corporation. Then the corporation can recover for its injury.<sup>27</sup>

One of the best known cases on this topic involved a leading department store.<sup>28</sup> In this case the defendants were authors of a book which said that certain classes of the store's employees were prostitutes or homosexuals. Even though the individual employees in one class referred to (the salesgirls) could not recover because of the size of the group, the store was allowed recovery. The court said that a corporation may be libeled by

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<sup>23</sup> Trenton Mutual Life and Fire Insurance Co. v. Perrine, *supra* note 1.

<sup>24</sup> Brayton v. Cleveland Special Police Co., *supra* note 19.

<sup>25</sup> Brayton et al. v. Crowell-Collier Publishing Co., *supra* note 14; Simpson v. Steen, 127 F. Supp. 132 (D. C. Utah, 1954).

<sup>26</sup> McBride v. Crowell-Collier Publishing Co., 196 F. 2d 187 (5th Cir. 1952).

<sup>27</sup> De Mankowski v. Ship Channel Development Co., 300 S. W. 118 (Tex. Civ. App. 1927).

<sup>28</sup> Neiman-Marcus Co. v. Lait, 107 F. Supp. 96 (S. D. N. Y. 1952).

words written about its employees if such words discredit the way in which the corporation runs its business. The question whether or not the corporation was libeled as to its conduct of its business would be one of fact, for the jury to decide. The store had alleged special damage, which was necessary for recovery in this case.

In defamation of a corporation, the courts often have discussed the necessity for the corporation to allege special damages. Some courts have stated that it is necessary for the corporation to set out the specific damage suffered as a result of the libel or slander. Others have held that it is not necessary to allege special damage when the language is of such a defamatory nature that some injury must necessarily result directly from the defamation.<sup>29</sup> When a corporation is so defamed as to lose the confidence of its customers in its product, the corporation may maintain action without an allegation of special damage.<sup>30</sup> Thus, when a railroad is charged with unsafe service, or a bank is charged with financial weakness, or a manufacturer is charged with selling a worthless product, the charges go directly to the reputation of the business, and special damage need not be alleged.<sup>31</sup> A charge of "unfitness" or "improper conduct" of its business is actionable without proof of special damage because belief in the statement would naturally tend to drive customers away.<sup>32</sup>

In many cases courts have discussed the difference between defamation *per se* and defamation *per quod*. Of course, where the defamation is libel or slander *per se*, it is not necessary to allege special damage. It appears that it is wise for corporations to allege and prove special damage, as this certainly will obviate any question whether the defamation is *per se* or *per quod*, if the evidence is adequate. One of the clearest discussions of libel *per se* or *per quod* is the *Erick Bowman Remedy Company* case.<sup>33</sup> Here the court said that, for a libel to be *per se* and actionable without an allegation of special damage, the publication must by itself injure the credit, property or business, and

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<sup>29</sup> Reporters Assn. of America v. Sun Printing and Pub. Assn., *supra* note 14.

<sup>30</sup> American Book Co. v. Gates, *supra* note 14.

<sup>31</sup> *Ibid.*

<sup>32</sup> Ohio & Mississippi Railway Co. v. Press Publishing Co., *supra* note 14.

<sup>33</sup> Erick Bowman Remedy Co. v. Jensen Salsbery Laboratories, *supra* note 2; Langworthy v. Pulitzer Publ., 368 S. W. 2d 385, 388 (Mo. 1963).

result in a pecuniary loss. If the publication merely attacks the quality or value of the company's goods, it is not necessarily libelous per se. However, even though the words may not be actionable per se, if some special damage actually results from them, a cause of action does arise.

In a case where the publication is not clearly libelous per se, it is necessary to allege and prove special damage. In order for the corporation to recover, it then is necessary also to show that the special damage was a direct result of the libelous publication. Special damage to a business corporation may be shown by citing examples of actual loss of individual customers, or of loss of particular contracts of sales, et cetera, as a direct result of the libelous publication.<sup>34</sup>

While it certainly would strengthen a corporation's case to allege and prove special damage, there are many cases where courts have held that a defamation was actionable per se. A Kentucky court said that it was actionable per se to publish that a Negro man was placed as a boss over white girls.<sup>35</sup> Where an insurance company issued a memorandum containing an analysis of the financial status of a competitor, the court said that it was libelous per se because the language used would lead an ordinary person to believe the competitor to be insolvent.<sup>36</sup> In a similar case a manufacturer said about a competitor that he was in a serious financial condition, had almost stopped operations, was out of production, etcetera. The court said that, inasmuch as the statements were false, they were libelous per se.<sup>37</sup> Some courts have even made sweeping general statements to the effect that a defamatory statement dealing with a corporation's business, ability to do business, methods of doing business, credit, or solvency, is libelous per se.<sup>38</sup>

In summary it may be stated that corporations may be compensated with damages when they have been defamed. Recovery is limited to situations when a company is defamed as to its honesty, credit, property, management, or business.

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<sup>34</sup> *Ibid.*

<sup>35</sup> *Axton-Fisher Tobacco Co. v. Evening Post Co.*, *supra* note 14.

<sup>36</sup> *Aetna Life Insurance Co. v. Mutual Benefit Health & Acc. Assn.*, *supra* note 10.

<sup>37</sup> *Wayne Works v. Hicks Body Co., Inc.*, 115 Ind. App. 10, 55 N. E. 2d 382 (1944); *Marr v. Putnam*, 246 P. 2d 509 (Ore. 1952).

<sup>38</sup> *Maytag Co. v. Meadows Mfg. Co.*, 45 F. 2d 299 (7th Cir. 1930); *Bourjois v. Park Drug*, 82 F. 2d 468, 470 (8th Cir. 1936).