

A. McCARTHY v. "THE SAMOA GUARDIAN"
NEWSPAPER AND PRINTING CO LTD AND WILLIAM TARR

HIGH COURT... Apia. 1928. 7, July. WOODWARD C.J.

Libel - claim against newspaper - whether report "fair and true"
and whether calculated to disparage or injure - malice - damages.

The plaintiff holding office as Commissioner of Police and Prisons and other high offices in the Administration when advised of a proposed meeting of the political party called the "Mau" (at a time when the territory was in a disturbed political state) to be held in a prohibited "disturbed area" of Apia, warned one Tamasese not to hold the meeting. Tamasese was an acknowledged "Mau" leader. The meeting was held notwithstanding and Tamasese attended it. The plaintiff thereupon ordered the arrest of Tamasese; all attempts, however, being unsuccessful. The day following the meeting, the plaintiff's went to Tamasese's house where, in the presence of a large assembly of the latter's followers, a conversation about the attempted arrest took place between the plaintiff and Tamasese; a member of the Police Force acting as interpreter.

A report of the conversation and a leading article were published in the "Guardian's" issue of 15th March 1928. The matter of the report was given to the editor by one Mata'u who was present and is associated with the "Mau". The alleged libel is contained in the report and article and their respective headings as follows:-

"Spectacular Police Stunt - Tamasese's Arrest
declared to be a mistake"

and "Administration at fault"

The plaintiff claims that the report and article meant and imputed that he, as Commissioner of Police and Prisons, made a mistake in authorising the arrest of Tamasese and that he had admitted his mistake and had expressed regret to Tamasese. Further, that the newspaper account meant and imputed that the plaintiff had failed to uphold and support the actions of subordinate police officers and overall that such account conveyed reflections on the plaintiff calculated to injure him in his office of Commissioner of Police and Prisons and as an official of the Administration and that the words in the report and leading article were untrue.

The defendants say, inter alia, that the words complained of do not purport to be a verbatim report and that they were in substance a fair and true account of the plaintiff's interview with Tamasese.

- HELD:
1. The plaintiff did not express regret for the attempted arrest and that therefore the words in the "Spectacular Police Stunt" report and in the leading article were not in substance a fair and true report.
 2. Applying the test of an unbiased mind and what an ordinary reader reading words, not critically, but as newspaper reports and articles are usually read, that the words in the "Spectacular Police Stunt" article mean and impute that the plaintiff made a mistake in ordering the arrest of Tamasese and that the plaintiff admitted his error and expressed regret to Tamasese.

Neville v. Fine Arts and General Insurance Co
(1897) L.I.R. at p. 195 referred to.

3. That the imputation in the "Spectacular Police Stunt" report is libellous imputing that the plaintiff lacked

qualities requisite for the office of Commissioner of Police and for any high responsible office of authority over the people of the Territory.

Halsbury Vol. 18 at p. 630 s. 1185 referred to.

Observations generally as to the amount of damages.

Judgment for the plaintiff

Cur. adv. vult.

WOODWARD C.J.: In this action plaintiff claims £1000 as damages for an alleged libel published in the issue of 15th March last of the "Samoa Guardian" newspaper, of which the defendant company is the proprietor and the defendant Wm. Tarr is the editor. The paper is published weekly and circulates in Western Samoa and elsewhere.

The plaintiff at the date of the publication held the office of Commissioner of Police and Prisons in the Territory as well as other high and remunerative offices under the Administrator. At that date a large part of the native population of the Territory was and for some time had been in a disturbed state. An Ordinance of the Legislative Council (No. 1 of 1928) had been passed on 21st February, which, among other restrictive provisions relating to natives, empowered the Administrator in certain events, to declare "disturbed areas" within which the holding of native meetings without the consent of the Commissioner of Police is forbidden.

On 28th February 400 natives had been sentenced to 6 months' imprisonment for the offence of besetting stores in Apia. On 5th March they had been liberated by the order of the Administrator. Prior to their liberation they had had several interviews with the late Administrator at Mulinu'u, where they were confined, and at one of these meetings he had placed before them ten points for consideration by them and by other members of the native political party called the "Mau". A copy of the issue of the "Samoa Guardian" detailing these points was put in evidence. It appears that there was an understanding between the late Administrator and the Natives of the "Mau" that they were to be at liberty to meet and discuss these points after their liberation. A definite term for this discussion does not appear to have been fixed. At the meetings with the late Administrator before their release the spokesman of the prisoners had been Tamasese, a leading Native Chief and a prominent member of the "Mau".

On the morning of 8th March the plaintiff learned that a meeting of the "Mau" or of a section of it was to be held in Tauese, a part of Apia township. Tauese being within an area which had been declared to be a "disturbed area" under the Ordinance, the plaintiff went to Tamasese at Vaimoso village about 11 a.m. and warned him not to hold the meeting. The meeting was held notwithstanding and Tamasese attended it. The plaintiff at that time thought that he did so in defiance of the warning, but now thinks that it may have been to convey the warning to the meeting. Tamasese says that was his purpose. The Ordinance makes it an offence to attend a meeting held without permission in a "disturbed area" and authorises the arrest without warrant of persons so offending. The plaintiff ordered the civil police to arrest Tamasese, and as the latter was returning from the meeting at about 5 p.m. they attempted to carry out the order. The attempt was unsuccessful, Tamasese reached his house at Vaimoso and the attempt was renewed there that afternoon by the police supported

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by a Naval force. It again failed. On the following day at about 8 a.m. the plaintiff went to Tamasese's house at Vaimoso with one Betham who is a member of the Police Force and is also an interpreter. A large number of Natives were assembled in and round the house. A conversation about the attempted arrest of the previous day took place between the plaintiff and Tamasese in their presence, Betham interpreting what the plaintiff said into Samoan and what Tamasese said into English. A report of the interview between plaintiff and Tamasese and of their conversation and a leading article in which the same subject is referred to were published in the "Guardian's" issue of 15th March. The matter of the report was given to the editor by a native named Mata'u who was present at the meeting and is associated with the "Mau". The alleged libel is contained in the report and article and their respective headings.

The report is headed:

"Spectacular Police Stunt"

"Tamasese's Arrest"

"declared to be a mistake"

and the other words complained of in the report are as follows:-

"On the morning of the 9th at about eight o'clock
"the Commissioner of Police, Mr McCarthy, and a
"Constable arrived at the house of Tamasese, when
"Mr McCarthy stated that the attempted arrest of
"Tamasese on the previous day had been a mistake.
"He expressed regret at the happening, and said
"that it arose over a misunderstanding."

The leading article is headed "Administration at fault", and the other words complained of in this article are as follows:-

"The position was eased somewhat by the Commissioner
"of Police calling upon Tamasese the following day
"and expressing his regret at the attempted arrest
"and stating in the presence of the 'Mau' that there
"has been a misunderstanding and that a mistake had
"been made. Such an admission, coming from an
"official in authority, no doubt carries some weight,
"but is there any assurance of non-interference in
"the immediate future."

The plaintiff claims in paragraph 11 of his statement of claim that the words quoted from the report and the article -

"mean and impute that the plaintiff as Commissioner
"of Police and Prisons did make a mistake in ordering,
"approving of or authorising the said arrest of the
"said Tamasese and that at such meeting or interview
"as aforesaid the plaintiff did admit to the said
"Tamasese that he the said plaintiff had so made a
"mistake and did express his regret that an attempt
"had been made to arrest him, the said Tamasese,"

and also claims in paragraph 12 of his statement of claim that the said words -

"mean and impute that the plaintiff as Commissioner
"of Police and Prisons did fail to uphold and support
"the actions of subordinate police officers of his

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"Department when such actions had been performed
 "by such officers in the proper exercise of their
 "duties."

He further claims that these words by reason of their said meanings convey reflections on the plaintiff calculated to injure him in his office of Commissioner of Police and Prisons and as an official of the Administration and that the said words were untrue.

The defendants deny that the words complained of bear the meanings alleged by the plaintiff and also deny that they are calculated to injure the plaintiff. They say that the words complained of do not purport to be a verbatim report and that they are in substance, fact and effect, a fair and true account of the plaintiff's interview with Tamasese.

I deal first with the question whether the words complained of in the "Spectacular Police Stunt" report are in substance a fair and true report of what the plaintiff said. If they are, then whether they are injurious to the plaintiff or not, this action is not maintainable.

As to what plaintiff said there is a conflict of evidence. The following sentences from the evidence of plaintiff and of Tamasese respectively show the principal point of conflict. Plaintiff says -

"In opening I said talofa to Tamasese and at once expressed
 "regret that the 'Mau' had opposed arrest the previous
 "day. Those may not be my exact words, but they are my
 "meaning."

Tamasese says that the plaintiff's first words were -

"The reason I come is because I am very sorry for what
 "happened yesterday."

He goes on to say that plaintiff said he was sorry because of the attempted arrest.

The report in the "Guardian" does not in any way purport to be a report of what the interpreter (Betham) said on plaintiff's behalf. I direct my enquiry, therefore, to the ascertaining of what the plaintiff himself spoke in English not what Betham said in Samoan when interpreting for him. The evidence, as to what Betham said in Samoan, of the numerous Samoan witnesses who understood only Samoan is not, according to the rules of evidence, admissible in proof of what was said by the plaintiff in English and I refused at the trial to use my discretionary power under section 248 of the Samoa Act to admit the evidence for this purpose. I did admit it to explain the general sequence of question and answer in the conversation, but the only direct evidence of what the plaintiff said is his own and that of those present who understood English. The value of that evidence obviously depends on the extent of the witnesses' knowledge of English.

An analysis of the conflicting evidence shows that plaintiff's version is supported by one witness, Betham, who has a good understanding of English, and is attacked by two witnesses who have a similar understanding, viz., Mrs Mann and Mata'u, who furnished the material for the report, and also by the following witnesses who have imperfect understanding of it. Tamasese (who says he understands it "in a way"), Saipaia, Anapu, Asi Vatau, and Joane.

Mrs Mann's evidence carries no weight with me. She says -

"I was outside the house close to where plaintiff was
 "sitting. I heard the plaintiff say he was very sorry

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"for what he had done yesterday. I heard no more
"because there was too much noise. I was not
"interested."

No other witness says that plaintiff said he was "sorry for what he had done". There is general agreement that his phrase was "for what happened". Mrs Mann having by a curious chance heard only those few words out of the whole conversation, cannot say to what extent plaintiff's later words may have qualified the opening sentence. Plaintiff's counsel rightly refrained from cross examining her. Mata'u in his examination in chief says -

"Plaintiff began with 'Talofa'. He then said, but
"not in these exact words 'I am very sorry for what
"happened yesterday. It was a mistake.' Cannot
"remember if he said what it was that had happened
"yesterday. He said that the attempt to arrest
"Tamasese arose through a misunderstanding, I think
"he said it was a misunderstanding from both sides.
"He said 'If I had known about it nothing would have
"happened'. He said the Natives should have come to
"him and asked permission. To that Tamasese replied
"'I do not think it is necessary for us to ask
"permission. At our last day at Mulinu'u the Adminis-
"trator gave us 10 points. I told the Administrator
"on behalf of the Mau that we would meet and discuss
"points'."

In cross examination this witness goes a little further. He says -

"Plaintiff made it clear what he was sorry for. He
"mentioned the attempted arrest. I think it was after
"saying he was sorry for what happened yesterday that
"he mentioned the attempted arrest. The words 'attempted
"arrest' were used but I cannot tell in what part of the
"conversation."

This does not agree with the witness's previous statement that he did not remember if plaintiff said what it was that happened the day before for which he was sorry. Taking the witness's own evidence in examination in chief I cannot agree with him that the words he attributes to plaintiff made it clear that what plaintiff regretted was the attempt to arrest Tamasese. "What happened yesterday" might equally mean what the natives did or what the plaintiff did. The plaintiff's reproof of the natives for not having asked permission seems to indicate that he was laying the blame on them for "what happened yesterday". The evidence of Mata'u is thus inherently unconvincing on the point of what it was that the plaintiff expressed regret for. It shows in my opinion an extreme readiness to find in plaintiff's words a meaning that they do not necessarily hear. The same readiness is to be found in Tamasese's evidence. Tamasese gives the plaintiff actual words thus, -

"the reason I came is because I am very sorry for what
"happened yesterday",

and then, what is apparently his own interpretation of them, thus -

"he said he was sorry because of the attempted arrest."

The other Native witnesses who understood English a little are equally unconvincing on the question of what the plaintiff expressed regret for. Sapaia says he understood the two English words "sorry" and "mistake". Anapu says plaintiff's words in English were -

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"I am sorry this morning about the trouble that
 "happened yesterday about the arresting of
 "Tamasese. I cannot say who did this mistake,
 "but I think the two sides did not understand
 "each other."

Asi Vatau who understands English slightly caught these words "I am
 sorry - yesterday - mistake".

Joane gives the English words -

"I am sorry about yesterday and the wrong of the
 "Government."

No other witness testifies to any words like "the wrong of the
 Government", and the witness says later -

"It is only my idea that the mistake is the
 "Government's."

I now quote an extract from Tamasese's evidence on cross
 examination which appears to me to be very illuminating. I make no
 further comment on it.

Tamasese says -

"I am not prepared for questions about this (the notice
 "declaring a disturbed area). Only about what plaintiff
 "said at Vaimoso. My preparation was only thinking about
 "what plaintiff said. I came (to Court) only in
 "connection with plaintiff's words;

and later

"I heard there was to be a hearing about what was said and
 "I thought over what was said. The other witnesses
 "discussed their views about it and I gave mine."

Saipaia, Fuimaono, Usu, Fuataga, Mataia, and Tagaloa all confirm that
 what plaintiff said has been discussed by them.

I now turn to the evidence of plaintiff and Betham.

The plaintiff says -

"In opening I said 'Talofa' to Tamasese and at once
 "expressed regret that the 'Mau' had opposed arrest on
 "the previous day. Those may not be my exact words, but
 "they are my meaning. I do not think I said why I
 "expressed my regret. I said it was quite possible I
 "would receive instructions to go on with the arrest and
 "if that happened it would mean the use of a larger force
 "and someone would get hurt if resistance was met with.
 "My object in saying that was to let them understand the
 "position and give them an opportunity to talk the matter
 "over so that wiser counsels would prevail. The
 "recollection most distinctly in my mind was that near
 "end of interview which was not very long, a reply came
 "from Betham that Tamasese was sorry a mistake had been
 "made on previous day. At this point I interrupted and
 "said -

'Tamasese you know very well there was
'no mistake.'

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"I said I had warned him in the morning that if
the proposed fono was held at Tauese it would
be against the law and that there would be
trouble. I said

'you know yourself that there was trouble'."

Betham says -

"Mr McCarthy first said 'Talofa' to Tamasese and told
"him he came to see him about what happened the day
"before. He said he felt sorry for what happened and
"more sorry to say that probably a larger force of
"marines would be sent ashore for Tamasese's arrest.
"I interpreted this to Tamasese. I felt myself that
"Tamasese would understand what I said, viz - that
"plaintiff was sorry about resisting of the arrest.
"Plaintiff said he came on his own account. Plaintiff
"said Tamasese was foolish to disobey the law and that
"he knew he was already warned not to attend the meeting
"at Tauese. He said there was a law prohibiting meetings
"in Vaimauga and Faleata. I believe Tamasese said the
"object of the meeting was to discuss the points but do
"not remember him saying that that was his reason for
"being there. Tamasese expressed dissatisfaction with
"arrest and said he felt it was not right. Also he
"said he was sorry that the arrest was attempted. I
"think he said he was sorry because the Commissioner
"of Police first said he was sorry. He said the
"Administrator had given time for the 'Mau's reply
"and meetings were necessary to settle the reply.
"When Tamasese said he thought the arrest was not right
"plaintiff said the arrest was quite right because
"Tamasese had been warned the day before."

These extracts and a comparison of the rest of plaintiff's and Betham's evidence with that of the Natives make it clear that what happened was that Tamasese intentionally or otherwise misconstrued the plaintiff's opening words, which, when translated into Samoa, may have been capable of misconstruction. The plaintiff, observing this, made his own meaning abundantly clear in English. I am not concerned with whether Tamasese still persisted in his misconstruction of it but I will observe that his evidence indicates that he was very willing to put the plaintiff in the wrong and generally belittle him before the assembled natives.
He says -

"The 'Mau' made big use of the plaintiff coming to us as
"he is a high officer of the Administration. Our idea was
"that plaintiff's words proved that a mistake had been
"made and afterwards admitted"

and again

"we sat there (i.e., in the fale before the plaintiff's
"visit) thinking that perhaps another force would come out
"but I had in my mind that a mistake had been made in
"regard to myself. Then when the plaintiff came and said
"the two words 'Talofa' and 'sorry' the crowd started to
"smile. I then concluded I had been right in my surmise."

Again later, referring to plaintiff's statement that he would return to Apia to try and get permission for future meetings, -

"I answered that that was his business and the 'Mau' was

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"not asking him to get permission. I had first told
"the Samoans of my intended reply and they agreed to
"it. I said he could please himself."

The defence directed some effort towards showing that the attempted arrest actually was a mistake and that the plaintiff not only did say so but also meant to say so. What the plaintiff meant to say is only relevant as being a probable indication of what he did say. As to what he meant to say I do not hesitate to accept his own testimony. A man's memory of his meaning is likely to remain clear long after he has forgotten the words he used to express it. I do not think plaintiff could possibly have forgotten, in the week between his visit to Tamasese and the publication of the "Guardian", the meaning of the message that he went to Tamasese expressly to convey. Since then he has had good reason to remember it. I do not believe that he has told or would tell a falsehood about his recollection of it.

My finding is that plaintiff did not express regret for the attempted arrest and that therefore the words in the "Spectacular Police Stunt" report are not in substance a fair and true report of what plaintiff said. This applies equally to the words complained of in the leading article.

The next question for decision is whether the words in question do bear the meanings alleged by plaintiff in paragraphs 11 and 12 of the statement of claim. The test is what meaning do the words convey to an ordinary reader reading them, not critically, but as newspaper reports and articles are usually read. The context in which the words appear and the occasion of their publication are to be considered in interpreting them. See "Nevill v. Fine Arts and General Insurance Co 1897 L.I.R. p. 195".

I deal first with the words complained of in the report headed "Spectacular Police Stunt". The report, as well as being the context of the words, relates with sufficient accuracy for the present purpose the occasion of their publication. It is necessary to quote from it at some length. It is to be noted that the heading indicates that the incident to be described is a "stunt" of the Police. Whatever disparagement lies in the word "stunt" is fixed on the Police. The report begins -

"a week ago excitement ran high on the beach due to
"the Police suddenly pouncing on High Chief Tamasese
"and making an attempt to arrest him."

Then after stating how Tamasese got away the report continues -

"The happenings prior to the attempted arrest show that
"had the Police done the right thing they would have
"commended the spokesman of the 'Mau' (Tamasese) instead
"of endeavouring to gaol him."

It is the Police who are here criticised for their attitude toward Tamasese. The report proceeds -

"Here is the story as we understand it: On Thursday
"morning at about 11 o'clock the Commissioner of Police,
"Mr McCarthy, called upon Tamasese at Vaimoso and
"informed him that he understood that the 'Mau' Committee
"was to hold a meeting that afternoon at Tauese. The
"Commissioner suggested, as Tauese was in a disturbed
"area, that Tamasese should prevent the meeting being
"held in order to avoid trouble."

There is no suggestion here that the Commissioner of Police was not

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issuing this warning on his own responsibility and on information received by him personally. He is the officer whose consent is required by the law to the holding of a meeting in a "disturbed area". This is not a function of the Administrator. The report then recounts that Tamasese sent word to the Committee of what the Commissioner had said, but on learning about 2 p.m. that the Committee had notwithstanding met at Tauese, hurried thither and repeated to the meeting the Commissioner's words, that the meeting then closed, and that as Tamasese was returning home about 5 p.m. the Police made an effort to arrest him on the beach road. The escape of Tamasese to his home at Vaimoso and the further vain attempt of the Police supported by Marines to arrest him there are then described. A report current in Vaimoso that the Police would return next day is then mentioned. Then follows the account of the plaintiff going to Vaimoso next day to see Tamasese where the words complained of occur.

"Mr McCarthy stated that the attempted arrest of Tamasese on the previous day had been a mistake. He expressed regret at the happening and said that it arose over a misunderstanding. He inferred that had permission been asked to hold the meeting it may have been granted."

So far there has been no mention or suggestion of anyone as the author of the alleged mistake save the Police or the Commissioner of Police, who is represented as having gone to Tamasese to express regret at it.

Then follows the first reference to the Administrator.

"Tamasese replied that permission was not necessary as the Administrator had been told that the 'Mau' Committee would need some time to consider the 10 points which had been submitted by the Administrator, so that the meeting at Tauese was but part of the business of considering the 10 points."

Tamasese confronts the plaintiff with his own superior officer's implied permission. He then, according to the report, declines the plaintiff's suggestion that the Committee should disperse. The report goes on to relate that after plaintiff left at the conclusion of this interview a special service was held (by the natives) in Vaimoso Church where reference was made to the "peculiar action of the Police", not of the Administrator.

"The service was still on when Mr McCarthy arrived back in the village at about 11.30 a.m. After the Church service Mr McCarthy in the presence of a big gathering, told Tamasese that permission had been given to hold meetings till the 10th instant. Tamasese expressed surprise at this statement, contending that his people had understood previously from the Administrator that their meetings would not be interfered with, and he reminded Mr McCarthy that in their conversation the day before he had mentioned this fact."

The plaintiff, so the report infers, was made to look foolish by Tamasese in the presence of a big gathering for the "Spectacular Police Stunt", the "peculiar action of the Police" of the day before. Tamasese coolly tells plaintiff that the permission that he offers and which the Ordinance empowers him alone to give, was not wanted as it had been granted some time before by the Administrator over plaintiff's head. The last words of the report are eloquent -

"Mr McCarthy then retired."

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The meaning would scarcely be plainer if it had been stated that he retired silenced and humiliated, convicted out of his own mouth of having made a mistake.

The defence called eight prominent European citizens of Apia who testify that they would not understand from the words complained of that the mistake alleged to have been admitted by the plaintiff was that of the plaintiff. Of these eight Messrs McKenzie and Williams are shareholders in the defendant Company, and Messrs Kruse and Helg are directors of a Company which is itself a considerable shareholder. These four have therefore an interest in the present action. This was not known to counsel for the defence when he called them. Mr Dowling qualifies his opinion by saying that putting aside local knowledge and elsewhere than in Samoa the words complained of might bear another meaning. A number of native witnesses for the defence were also questioned as to the meaning of the words, but I doubt from the manner and the substance of their answers whether any one of them was capable of disassociating the meaning of the "Guardian's" words from his own opinion on the matter which they concerned. Col. Hutchen, Secretary to the Administration, who was called for the plaintiff, saw the possibility of two meanings. He says -

"The only two possible meanings I took from them (the report and the leading article) were that the plaintiff himself had made a mistake in attempting Tamasese's arrest or that he had gone and told Tamasese that the Administrator had made a mistake."

His evidence was described by counsel for defence as interested, but I think that though Col. Hutchen might be disposed, as a senior officer of the Administration, to be somewhat severely critical of any mistake which the plaintiff might make, there is no reason why he should be more disposed than another to read into the article the meaning that plaintiff had admitted making a mistake. The same remark applies to Constable Irwin, who gives his impression on reading the report thus -

"The meaning to me was that the Police had made a mistake. I thought the plaintiff was making himself agreeable to the natives at our expense by accusing us of a mistake...I felt inclined to fly off the handle."

It is true that it was the personal application of the report that angered this witness, but if the report meant that he and the other constables had made a mistake, it meant a fortiori that plaintiff had made one.

In any case I am not bound, though I may be guided, by evidence of what others thought this article meant. It is almost inevitable that local witnesses should form opinions from time to time as to who is chiefly responsible for decisions, such as that to arrest Tamasese, arrived at by the authorities. These opinions it may be supposed are based on some knowledge of the views and characteristics of the personnel of higher officers of the Administration.

These views and characteristics are matters extrinsic in this case and I must guard against giving too much weight to evidence which may be unconsciously coloured by a knowledge of them. Though every man may not read the "Spectacular Police Stunt" article in the first sense claimed for it by the plaintiff I am satisfied that many would read it in that sense. The article speaks of a mistake being admitted. Obviously it must be somebody's mistake. The reader, being human, enquires whose it was and will not be satisfied till he has debited it to some individual person. He finds his answer in the heading of the article "Spectacular Police Stunt", in the statement that the plaintiff expressed regret at the

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happening, in the words "peculiar action of the Police", and in the significant ending of the article implying that the plaintiff retired silenced because he was unable to deny his mistake. In the face of these indications I think that a jury would conclude that the meaning of the "Spectacular Police Stunt" article to an ordinary reader is that the mistake was that of the plaintiff acting through his subordinate officers and that it was admitted to be such by the plaintiff.

As to the second meaning (that alleged by the plaintiff in paragraph 12 of the statement of claim) there is nothing in the article to suggest that the constables acted without plaintiff's orders or that he disassociated himself from them in speaking to Tamasese. I think upon further consideration and being guided by the opinion of witnesses called since I gave my non-suit judgment that the second meaning is not sustained independently of the first.

I now direct my attention to the meaning of the words in the leading article. From this article it seems to me to be at least reasonably possible to draw the inference that the mistake alleged was not that of the plaintiff. It is headed "Administration at fault". It uses the phrase "inexplicable conduct on the part of the Administration". It refers to "this sudden shift of policy". The word "policy" appears to me to elevate the attempted arrest into a policy measure and as such above the sphere of the Commissioner of Police. This article ends -

"such an unwise step, to say the least of it, is
"not calculated to foster a feeling of confidence
"in the Administration", which in the present
"instance is sadly at fault."

I do not think in regard to the leading article the plaintiff has discharged the burden which lies on him of proving that it means what he says it means.

But the leading article will be understood by the public to be no more than the paper's comments upon the facts reported in the "Spectacular Police Stunt" article: the view of those facts taken by the Editor personally. Readers are not bound to take that view. It may be that it is the view of a man who has a bias against finding the plaintiff in fault or a bias towards finding the Administrator or some other person in fault. The test which a jury must apply and which I (combining the functions of Judge and Jury) must apply is the opinion of an unbiased mind as to the meaning. The "Spectacular Police Stunt" article purports to be an account of facts, and comments cannot alter facts. I must conclude therefore that the leading article does not affect the meaning of the "Spectacular Police Stunt" article and that that meaning is what plaintiff alleges it to be in paragraph 11 of the statement of claim.

The next point for decision is whether the meaning, as I find it, of the words complained of in the "Spectacular Police Stunt" article was calculated to disparage or injure the plaintiff in his office of Commissioner of Police or in his position as an official of the Administration.

In dismissing the application for a non-suit at the close of the plaintiff's case I said -

"The arrest, in the circumstances of the time, was a step
"requiring the most careful consideration of pros and cons.
"It was a measure in which a large force of men were to
"be employed and it was likely to involve most serious
"consequences. If there was any probability of its being

"a mistake it ought not to have been attempted at
 "all. It was a momentous action to take. It called
 "for decision in embarking on it and a fixed
 "determination to see it through. The view of a
 "reasonable man, understanding from the 'Guardian'
 "that the plaintiff had admitted no later than next
 "morning that he had made a mistake in attempting it,
 "and that he regretted it, would undoubtedly be that
 "the plaintiff was not equal to the occasion, that
 "he acted foolishly and rashly in making the attempt
 "and vacillatingly and almost abjectly in regretting
 "it to Tamasese when it failed."

That is the imputation contained in the "Spectacular Police Stunt" report. It is an imputation that the plaintiff is lacking in qualities requisite for the Office of Commissioner of Police and indeed for any high responsible office of authority over the people of the Territory. Such an imputation is libellous, Hals Vol. 18 p. 630 S.1185. The plaintiff is therefore entitled to judgment.

It was argued that if it is not libellous to say falsely of a man that he made a mistake it is not libellous to say that he admitted making one. There is a great difference. To charge a man with making a mistake is but to express an opinion which the reader may or may not approve from his own view of the facts. It leaves the reader's judgment free. It is comment. To charge him with admitting a mistake is almost to compel the reader to believe that he has made it. It fetters the reader's judgment, and in this case it fetters his judgment with a falsehood. It is certainly not comment.

As to the amount of damages I observe, first, that there is no proof of actual malice on the part of defendants. The "Spectacular Police Stunt" article, however, in whatever way it is read, attributes such improbable and extraordinary conduct to the plaintiff that to publish it on the sole authority of a native reporter and without reference to the plaintiff was decidedly negligent, the more so as Mata'u's draft, from which it was written up, contains such indications of Mata'u's partisanship with Tamasese and the "Mau" as should have warned Mr Tarr of the probability of its being partial and inaccurate. Secondly, the defendant Wm. Tarr twice offered to publish in the "Guardian" a correction of the damaging report. It is true that later, when the matter was in the hands of the parties' legal advisers, the offer was made subject to a condition that the plaintiff's version should be verified. When finally that version was submitted for publication the defendants demurred to it. They did so no doubt because the natives when referred to maintained, as they still do, the correctness of the original version. Under these circumstances and as the plea of truth was coupled with a denial of the defamatory meaning I cannot regard this demur as a serious aggravation of the wrong. Defendant's counsel has in Court expressly repudiated any suggestion that plaintiff was blameworthy. Thirdly, although the libel was given wide publicity by appearing in a newspaper, the plaintiff has not proved any actual damage up to the present, and the effect of this action should be to reduce if not to remove the possibility of future damage suggested by the Administrator's letter to plaintiff of 16th March last.

The sum for which the plaintiff will, under these circumstances, have judgment is such as I consider to be warranted by these observations.

Judgment will be for plaintiff for £100 with costs to be settled by the Registrar and counsel's fees on the lowest scale of the New Zealand Supreme Court including five guineas per day for the five extra days of the trial.