

**SMITH, BELL & CO., LTD., PLAINTIFF AND APPELLANT, VS.
DAVID E. ELLIS, DEFENDANT AND APPELLEE.***G.R. No. 24690. December 16, 1925*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-24690/>**STATEMENT**

Plaintiff alleges that it is a domestic corporation with its principal office and place of business in the City of Manila. That the defendant claims to be a British subject, domiciled in Hongkong, who is now temporarily residing in the City of Manila. That the plaintiff was incorporated under the laws of the Philippine Islands on the 21st of April, 1909, and continuously from that date has been engaged in commercial transactions on a large scale in the City of Manila, and through its agencies in the Philippines, and enjoyed a good business reputation. That it is the successor of the business and name of Smith, Bell & Company, a partnership organized under the laws of Great Britain, which was engaged in commercial transactions in the City of Manila and throughout the Philippine Islands for more than fifty years prior to April 21, 1909, and which at all times enjoyed a good business reputation. That on May 4, 1925, the defendant signed and swore to a "certain statement in writing, a copy of which is hereto attached, marked Exhibit A, and made a part of the complaint, and caused the same to be filed in the Court of First Instance of the City of Manila in a civil action "then pending in the Court of First Instance of the City of Manila entitled 'Smith, Bell & Co., Ltd., plaintiff, vs. The Malabon Sugar Company, S. C. Preston, E. H. Teal, Henry Chandler and J. H. Marsman, defendants,' the said civil action being civil cause No. 27889 of the records of the said Court of First Instance of the City of Manila;" that in Exhibit A, among others, the following statement was made:

" * * * That as a result of his investigations affiant has definitely reached the conclusion that Smith, Bell & Co., Ltd., irrespective of any questions as to the legal validity of the contract under which they claim to be operating the affairs of the defendant corporation, a copy of which is attached to the affidavit of said H. T. Fox as Exhibit A, have committed serious breaches of said contract and have been guilty of gross mismanagement and irregularities.' "

It is then alleged that the above statements "were, and are, wilfully and maliciously false, and were made, filed, and published by the defendant in bad faith and with intent to injure the plaintiff;" that in the making of said affidavit the "defendant intended to charge and assert, and to be understood as charging and asserting, and was, in fact, understood as charging and asserting, that this plaintiff had neglected and mismanaged the business and affairs of a certain corporation known as 'The Malabon Sugar Company,' and had been guilty of dishonesty and irregular conduct in connection with the management by plaintiff of the business and affairs of said The Malabon Sugar Company."

That by reason thereof, plaintiff has been damaged in the sum of P100,000, for which it prays judgment and costs, and for such punitive and exemplary damages as the court may seem just and equitable.

The defendant demurred to the complaint on the ground that it does not state facts sufficient to constitute a cause of action, assigning the following reasons:

"That a copy of the affidavit of defendant referred to in plaintiff's complaint, which affidavit contains the alleged libelous matter complained of, is attached to and made a part of plaintiff's complaint, and it appears from paragraph IV of said complaint that said affidavit was filed in the Court of First Instance of the City of Manila in a civil action then pending in said court, entitled Smith, Bell & Co., Ltd. vs. The Malabon Sugar Company et al., said cause being numbered civil cause No. 27889.

"That it appears on the face of said affidavit that its contents were relevant and pertinent to the issue before the court in said civil cause No. 27889.

"That by reason of being filed in the course of a judicial proceeding the contents of said affidavit are therefore privileged and not actionable under the Libel Law of the Philippine Islands (Act No. 277 of the Philippine Commission) or under any other laws of the Philippine Islands."

The lower court sustained the demurrer, and plaintiff having declined to plead further, judgment was rendered for the defendant, from which the plaintiff appeals, contending that the lower court erred in sustaining defendant's demurrer to plaintiff's complaint.

JOHNS, J.:

The complaint alleges that Exhibit A was made and filed in the Court of First Instance of the City of Manila in a civil action therein pending, in which the plaintiff here was the plaintiff there," and the defendants were The Malabon Sugar Company, S. C. Preston, E. H. Teal, Henry Chandler and J. H. Marsman, and known as civil cause No. 27889. All of Exhibit A was attached to and made a part of the complaint, from which it further appears "that affiant is a stockholder of the defendant corporation."

"That affiant was at all such times acting as the representative of his brother, the said F. Ellis and of other shareholders resident in Hongkong, who together then held and now hold a majority of the shares of stock of the defendant corporation. That shortly prior to his departure from Hongkong to Manila on April 14, 1925, affiant's brother, the said F. Ellis, received a cabled communication direct from the said Smith, Bell & Co., Ltd., which was upon the same subject matter and supplementary to the cabled communications passing between the said F. Ellis and the said Elliott.

"That about the time of the departure of affiant from Hongkong on April 14, 1925, for the Philippine Islands, the said F. Ellis advised the said Elliott of the same by cable and upon the arrival of the affiant in Manila on the 16th day of April, 1925, affiant was met at the steamer on which he arrived by the said Elliott. A few hours later affiant was escorted to the offices of Smith, Bell & Company by the said Elliott and there introduced to H. T. Fox, the president of Smith, Bell & Co., Ltd., the plaintiff in the above-entitled action.

"That during his stay in Manila since his arrival on April 16, 1925, affiant has been in frequent communication with the said Fox and with the attorney of the plaintiff corporation, not only by meetings in person, but through the exchange of letters, and at all times affiant has been recognized by the said Smith, Bell & Company, Ltd., its officers, agents and attorneys, as the representative of shareholders of the defendant corporation resident in Hongkong and owning and holding a majority of the shares of said defendant corporation.

"That affiant came to Manila upon the instruction and request of said majority stockholders resident in Hongkong after cablegrams had been sent to said F. Ellis in Hongkong both by Smith, Bell & Co., Ltd., and by the defendants, Preston and Marsman.

"That the purpose of affiant in coming to Manila, and the instructions which he received from his principals were to the effect that he should make a careful investigation of and report on the differences existing between Smith, Bell & Co., Ltd., and the directors of The Malabon Sugar Company.

"That practically all of affiant's working hours since his arrival in Manila on April 16, 1925, have been devoted

exclusively to a careful, thorough and unbiased investigation of the differences and the controversy between Smith, Bell & Co., Ltd., and the directors of The Malabon Sugar Company, which led up to and are involved in the above entitled action. That in making said investigation affiant has given the said Smith, Bell & Co., Ltd., full opportunity through its officers, agents, employees and attorneys to furnish statements and memoranda regarding their views as to the facts and the points of law involved in the said controversy. That affiant's investigations also extended to the workings of the factory of the defendant corporation at Malabon where he had conversations with the employees and also particularly with special representatives of Smith, Bell & Co., Ltd., placed in charge of the operation of said factory." Then follows that portion of the affidavit set out in the complaint, which then recites that affiant has so reported to his principals at Hongkong, who are the majority of the stockholders of the Sugar Company, and that he has recommended that the plaintiff be removed from its management of the defendant corporation, and that, following his report, he was instructed by the stockholders whom he represented to "take all necessary action, or to assist in all necessary action to uphold the board of directors in its controversy with Smith, Bell & Co., Ltd., to secure a dissolution of the injunction issued in the above entitled action and otherwise to protect the interests of the shareholders."

It appears from the affidavit that the defendant came to Manila from Hongkong as a representative of a majority of the stockholders of The Malabon Sugar Company, with authority to make an investigation of its business dealings with the plaintiff, and that while here, he undertook and claimed to have made such an investigation, and that "as a result of his investigation, affiant has reached the definite conclusion that plaintiff has committed serious breaches of its contract with the Sugar Company," and "has been guilty of gross mismanagement and irregularities."

In its final analysis, his report is not a statement of any fact. It is nothing more than his opinion based upon the result of his investigation. The affidavit was also made and filed in a civil action in which the plaintiff here was the plaintiff, and The Malabon Sugar Company et al., defendants, and it appears upon its face that at the time it was made, the affiant was a stockholder of the Sugar Company, and that he was the local agent and representative of a majority of the stockholders of the Sugar Company, whom he come here from Hongkong to represent, in a dispute which was then pending between the plaintiff and the Sugar Company. It is true that technically the affiant was not a party defendant, but The Malabon Sugar Company was a defendant and Ellis was here as the local representative of a majority of the stockholders of the Sugar Company, and the affidavit in question was made and used in an action in which the Sugar Company was the defendant, and it was made of and concerning questions involved in the dispute between the parties to that action.

The authorities cited in plaintiff's brief are good law, but upon the facts shown in this record, they are not in point. First, the affiant says nothing more than the fact that, as a result of his investigation, he had reached the conclusion that the plaintiff had breached the contract and "is guilty of gross mismanagement and irregularities." As to such matters, that was nothing more than his opinion. Although it may have been wrong, yet, his affidavit was relevant and pertinent in the case in which it was filed upon the question then pending before the court.

Ruling Case Law, volume 17, page 336, says:

"* * * As to the degree of relevancy or pertinency necessary to make alleged defamatory matter privileged the courts favor a liberal rule. The matter to which the privilege does not extend must be so palpably wanting in relation to the subject matter of the controversy that no reasonable man can doubt its irrelevancy and impropriety. In order that matter alleged in a pleading may be privileged, it need not be in every case material to the issues presented by the pleadings. It must, however, be legitimately related thereto, or so pertinent to the subject of the controversy that it may become the subject of inquiry in the course of the trial. * * *"

Corpus Juris, volume 36, page 1252, says:

"* * * In determining the question the courts are liberal, and the privilege embraces anything that may possibly

be pertinent. All doubt should be resolved in favor of its relevancy or pertinency."

From the nature and contents of the affidavit, it is very apparent that it was germane and pertained to the matters then in dispute. Construing the affidavit as a whole, as we must, together with the fact that it was filed in an action pending, in which the affiant was the local agent and representative of a majority of the stockholders of the defendant Sugar Company, we are clearly of the opinion that the complaint does not state a cause of action. The plaintiff having declined to amend in the lower court, it follows that the judgment must be affirmed, with costs. So ordered.

Avanceña, C. J., Malcolm, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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