

## LAPHAM v. NOBLE

(Circuit Court, S. D. New York. February 6, 1893.)

**LIBEL—WHAT CONSTITUTES—WORDS TENDING TO INJURE BUSINESS.**

A circular letter of and concerning an agent and broker for government supply contractors, composed, published, and sent by the secretary of the interior to intending bidders for such supply contracts, and stating that "any interference on the part of W. R. L., [plaintiff,] a former chief of the stationery and printing division, with the business in any way, will not be to the interest of any person or firm represented," is capable of a libelous interpretation, and a complaint which properly pleads the same is good as against a demurrer.

At Law. Action by W. R. Lapham against John W. Noble for libel. Defendant demurs to the complaint. Overruled.

Edward M. Groat, for plaintiff.  
Myers & Anable, for defendant.

WALLACE, Circuit Judge. The defendant's demurrer raises the question whether the complaint states facts sufficient to constitute a cause of action. The action is to recover damages for the publication of a circular letter concerning the plaintiff, upon the theory that it was a libel. The complaint alleges that at the time of publication the defendant was, and for some time prior thereto had been, the secretary of the department of the interior of the United States; that for many years prior to December 15, 1891, the plaintiff had been an employe in the stationery and printing division of said department, and for some time had been chief of such division; that on December 15, 1891, the plaintiff resigned his position, and entered upon, and has since continued in, the business of a government contractor for supplying the various departments of the government at Washington with stationery and office supplies, and also in that of an agent or broker for others in that business, employed by them to arrange their bids, and negotiate and procure the acceptance of the same. The complaint further alleges that on March 28, 1892, while the plaintiff was still prosecuting his said business, the defendant composed, of and concerning the plaintiff and his business, a circular, and, with the intent of injuring the plaintiff in his business, caused it to be sent to all persons who were, or had been, or were likely to be, bidders for government contracts for supplies for the use of the several departments. The circular is as follows:

"Department of the Interior, Washington, March 28, 1892.

"Sir: In order that there may be no misapprehension on the part of persons intending to submit bids for furnishing envelopes and stationery for the use of this department during the ensuing year, you are informed that any interference on the part of Mr. W. R. Lapham, a former chief of the stationery and printing division, with the business in any way, will not be to the interest of any person or firm represented.

"Respectfully,

John W. Noble, Secretary."

The complaint alleges that the defendant meant by the word "interference" in the circular to say falsely that the plaintiff, by the prosecution of his business, was meddling with matters which

were not of his concern; and by the words, "any interference \* \* \* will not be to the interest of any person or firm represented," the defendant meant to say falsely that the plaintiff was incompetent in his business, and his services to intending bidders would be and were of no value; and that by said circular the defendant falsely gave those to whom it was sent to understand that the plaintiff had been an incompetent and untrustworthy government official, and that the defendant had reason to distrust him. The complaint also alleges that special damage was sustained by the plaintiff by reason of the publication of the circular, and sufficiently sets forth the facts constituting the special damage.

There is no statutory law and no principle of the common law which prohibits the plaintiff from pursuing the business in which he was engaged. The fact that he had shortly before been an employe of the government, and in that position had acquired peculiar information of the wants of the departments, their modes of conducting business, and of the most advantageous way of preparing bids and presenting proposals for furnishing supplies, did not militate against his right to act as an agent or broker for others in their dealings with the department. There was no impropriety in his doing so, provided he did not assume to enjoy some illegitimate advantages by reason of his former position. There is no merit in the point that the plaintiff's business was not a lawful one, and that he therefore cannot maintain an action for defamation in respect to it.

Any publication concerning an individual which tends to prejudice him in his employment is a libel. The circular is capable of a meaning which brings it within this definition. As the complaint alleges, it may be read as intending to state that the plaintiff's services would be of no value to persons proposing to employ him. It is capable of a much more vicious meaning. In the light of the circumstances under which it was sent, it may be read not only as an imputation of the plaintiff's incompetency as a broker, but also as an intimation that his employment would be regarded by the department of the interior as an intermeddling and an officious interference therewith. One meaning of "interference" is "intermeddling." The circular implies quite definitely that persons having business to do with the department will consult their interests by not employing the plaintiff.

When words spoken or published are ambiguous in their import, or may permit in their application more than one interpretation, and in some sense may be defamatory, the question whether they are such is for the jury. *Lewis v. Chapman*, 16 N. Y. 369; *Sanderson v. Caldwell*, 45 N. Y. 398; *Woodruff v. Bradstreet Co.*, 116 N. Y. 217, 22 N. E. Rep. 354; *Williams v. Smith*, 22 Q. B. Div. 134.

**The demurrer is overruled, with costs.**

**MURPHY v. UNITED STATES.**

(Circuit Court, N. D. California. January, 1893.)

No. 11,488.

**1. GOVERNMENT EMPLOYE—NAVY YARDS—SUSPENSION—COMPENSATION.**

The suspension by the commandant of a government navy yard, upon charges preferred, of a foreman mason appointed by him, and receiving a per diem compensation, is equivalent, so far as the right of compensation is concerned, to a dismissal.

**2. SAME.**

The fact that a board of investigation is subsequently appointed by the secretary of the navy to inquire into the charges against the foreman, which board recommends his dismissal, is not a recognition of his status as a government employe, and the fact that he was not formally dismissed is immaterial.

**3. SAME—CLAIMS FOR TRAVELING EXPENSES.**

Such foreman cannot recover from the United States his expenses in traveling from Washington to Mare Island navy yard, Cal., to be present at the investigation, when it appears that his presence in Washington was for the purpose of procuring a reinstatement, and that the board was appointed on his application.

At Law. Action by Charles Murphy against the United States to recover compensation alleged to be due him as foreman mason at the Mare Island navy yard. Heard on demurrer to the petition. Demurrer sustained.

H. B. M. Miller, for plaintiff

Charles A. Garter, U. S. Atty., and Charles A. Shurtleff, Ass't. U. S. Atty.

**GILBERT, Circuit Judge.** The plaintiff filed his petition under the act of congress approved March 3, 1887, entitled "An act for the bringing of suits against the government of the United States." The petition contains two causes of action. The first is, in substance, that on July 23, 1885, the plaintiff was, by the commandant of the United States navy yard, at Mare island, Cal., appointed foreman mason of said navy yard, "at the understood and agreed compensation of six dollars per day;" that he forthwith entered upon the performance of his duties as such foreman, and continued to perform the same until September 29, 1885, when he was suspended by the commandant, by reason of certain charges which had been preferred against him; that on November 30th following, a board of investigation met at Mare island under the direction of the secretary of the navy, to investigate said charges, and on January 7, 1886, the board reported to the secretary, recommending the plaintiff's dismissal; that the plaintiff was never discharged, and that the proceedings of the board, for reasons alleged in the petition, were illegal, and of no effect; that ever since the 23d day of July, 1885, plaintiff has been, and now is, the regularly and duly appointed foreman mason at said navy yard; that there is due the plaintiff his compensation as such foreman from the date of his suspension to the commencement of this action, in the sum of \$10,430.