IN THE FIJI COURT OF APPEAL
Civil Jurisdiction

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Civil Appeal No. 40 of 1981

BETWEEN:

1. JAMES ARTHUR RENNIE BORRON
2. MAGO ISLANDS ESTATE LIMITED — APPELLANTS

- and-

1. FIJI BROADCASTING COMMISSION
2. NEWSPAPERS OF FIJI LIMITED — RESPONDENTS

K.C. Ramrakha and N. Dean for the Appellants
B. Sweetman for the 1st Respondent
T.J.G. Poy Fong for the 2nd Respondent

Date of Hearing: 16th March, 1982
Delivery of Judgment: 2 APR 1982 1982

JUDGMENT OF THE COURT

Spring, J.A.

The appellants appeal to this Court against a judgment of the Supreme Court given on 30th January, 1981 in which a claim by the 1st appellant - James Arthur Rennie Borron - for damages for alleged libel was sustained and damages amounting to the sum of $3,000 awarded against - Newspapers of Fiji Limited, the Proprietors of the "Fiji Sun" - the 2nd respondent. The 1st appellant's complaint to this Court is that the amount of damages awarded was inadequate and should be substantially increased. The 1st appellant also appeals against the dismissal of his claim against the Fiji Broadcasting Commission - the 1st respondent - from whom he sought damages for an alleged libel. The 2nd appellant - Mago Island Estate Limited - appeals against the dismissal of its claim against both the above named respondents for damages in respect of an alleged libel.

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The claim against the 1st respondent, the Fiji Broadcasting Commission, by both appellants is in respect of two broadcasts made by it in the English, Fijian and Hindi languages in its news programmes on the 18th and 22nd February, 1978. The text of the broadcasts on the 18th February differed from the text of the broadcast delivered on the 22nd February, 1978. The claim against the 2nd respondent the proprietor of the Newspaper "Fiji Sun", is in respect of an article which appeared therein on the 24th February, 1978, under the heading "Hell Island". The learned Judge in the Court below describes the article as follows :

> "In a very large black type 1½ inches high on page 3 at the top of the page of the relevant issue appears the caption to the article:
>
> "HELL ISLAND! "
>
> Then follows a subheading in large letters
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> "Teachers escape from forced labour stint."
>
> Then follows the article as follows:
>
> 'The Fijian Teachers Association has called school committees and managers who bully teachers 'narrow and undemocratic' following the fleeing from Mago Island last week of two male teachers who alleged they found it 'impossible' to get on with the owner of the island, Mr. James Borron.
>
> The two teachers have since found other teaching posts in Suva schools. Their names have not been revealed by the FTA but its general secretary, Mr. Isimeli Cokanasiga, gave details of the case to the SUN yesterday.
>
> Mr. Cokanasiga said the two teachers alleged they were given caneknives by Mr. Borron soon after their arrival on the island and told to clean up the school compound before the school keys would be handed to them.
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> The teachers refused to do this as they felt it not their duty.
>
> Mr. Cokanasiga said the FTA found the island owner's orders 'unsatisfactory and totally unacceptable'.

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'Teachers do look after school compounds and ensure they are kept clean but this is done in their own time when they decide the compound needs cleaning,' he said.

Cokanasiga added that Borron allegedly dismissed a school committee made up of parents which was formed by the teachers as he wanted to pick them himself.

The teachers during their stay on Mago Island were not given the school building keys it is alleged.

Cokanasiga said the FTA is sending a letter to the Ministry of Education expressing concern at the allegations and demanding that the Ministry sort out the situation.

The FTA considers that the teacher has certain responsibilities to the children he teaches and to the community but he should have some freedom to carry out these responsibilities, Cokanasiga said, and not be treated like the ones on Mago Island alleged.

This case highlights the larger problem teachers face from certain school committees and managers who act under the impression that they are the 'beginning and end of everything' and this the FTA rejects, stated Cokanasiga.

'Teachers cannot work without the co-operation of the school committees but they should not be bullied in the process,' he said."

In the Court below the learned Judge found this article to be defamatory of the 1st appellant and said -

"There is no doubt in my mind that the article is defamatory of and damaging to Mr. Borron who is named in the article. A person reading the article would consider that Mr. Borron's conduct and actions had created the 'Hell Island' and made it a hell to live on. That he was amongst other things a bully, narrow minded and had acted undemocratically."

1st appellant was awarded damages of $3,000.

The claim for damages brought by the 2nd appellant against the "Fiji Sun" newspaper - was dismissed on the grounds that the newspaper article was not defamatory

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of the 2nd appellant. The claims by the 1st and 2nd appellants against the Fiji Broadcasting Commission were dismissed as the learned Judge concluded that neither text was defamatory of either of the appellants. There were in effect 6 separate causes of action. The 1st appellant's claim against the Fiji Broadcasting Commission in respect of the 2 separate broadcasts; his claim against the newspaper proprietor in respect of the article; the 2nd appellant brought similar actions against both respondents.

Both appellants appeal to this Court and the grounds of appeal may be shortly stated:

1. That the damages awarded to 1st appellant against the newspaper are manifestly inadequate and should be increased; further exemplary and/or punitive damages should have been awarded.
2. That the Supreme Court was in error in deciding that the broadcasts made by 1st respondent were not defamatory of the 1st appellant.
3. That the claim by the Company - the 2nd appellant for damages should have been upheld against 1st and 2nd respondents and that the Supreme Court was in error in holding that the broadcasts and the newspaper article were not defamatory

In Fiji actions for damages in libel suits are heard before a Judge sitting alone. The powers of a Court of Appeal to review such awards on the ground that they are either too high or too low are limited. When an award has been made, as in Fiji, by a Judge sitting alone, the principles which should guide a Court of Appeal are set out in the judgment of Lord Radcliffe in Associated Newspapers Limited v. Dingle /1964/ A.C. 371 where the learned Law Lord at p. 393 says:

> "A trial judge awarding damages for this kind of tort is habitually allowed a certain pre-eminence for his assessment above the assessments that might independently commend themselves to an appeal court..... An appeal court rejects his figure only in 'very special' or 'very exceptional' cases.

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> Such cases are embraced by the formula that the judge must be shown to have arrived at his figure either by applying a wrong principle of law or through a misapprehension of the facts or for some other reason to have made a wholly erroneous estimate of the damage suffered, so that, where an underestimate is in question, it is 'unreasonably small' or 'wholly inadequate'."

Mr. Ramrakha cheerfully acknowledged that the foregoing principles applied to the matters under consideration in this appeal and that for the appeal to succeed he had to show that this was a special case and that the damages awarded were "unreasonably small".

Turning to the 1st ground of appeal. Mr. Ramrakha submits that while the learned Judge had found the article in the newspaper to be defamatory of 1st appellant the damages awarded were inadequate. The newspaper article was a vicious indictment not only on Borron's reputation as a person, but also in his capacity as manager of the school on Mago Island known as Butoni School; that Borron lived on Mago Island which was isolated and lacked the ability to move among the people of Fiji and combat the scurrilous attack made upon him.

Mr. Fong for the 2nd respondent submitted that the learned Judge had taken all relevant matters into account and that there was no justification for interfering with the award of damages; nor had any case been made out for exemplary or punitive damages.

Exemplary damages are damages which are awarded to punish a defendant and vindicate the strength of the law. In considering whether exemplary damages should be awarded the Court should ask itself whether the sum it proposes to award as compensatory damages, which may include an element of aggravated damages is adequate in all the circumstances for compensating a plaintiff and also for punishing or deterring a defendant. Only if it is inadequate for the latter purpose should the Court consider awarding exemplary damages.

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Exemplary damages or punitive damages are exceptional; only in rare cases are they awarded. In Manson v. Associated Newspapers Ltd. /1965/ 1 W.L.R. 1038 Widgery J. in summing up to a Jury said at p. 1043:

> "Of course, a newspaper is always published for profit. It is the purpose of a newspaper to make money and build up circulation. You must not go away with the idea that because of that any libel in a newspaper is a libel for which exemplary or punitive damages must be awarded. If a newspaper, in the ordinary way of business, publishes news in regard to a particular item and happens to make a mistake, the mere fact that it is publishing for profit does not open the door to an award of exemplary or punitive damages. The only cases (and they must be very exceptional, you may think) in which exemplary or punitive damages are permissible are those cases where the jury is satisfied that the publication was done with a deliberate, calculated view to making a profit out of that publication and ignoring the fact that damages might be payable because they would be so small, at any rate so small in relation to the potential profit."

No submissions were advanced in this appeal that the learned trial Judge had misapprehended the facts or applied a wrong principle of law. Mr. Ramrakha submitted that while the learned Judge had found the article in the "Sun" defamatory of the plaintiff he had made an unreasonably small award of damages and that this was a special case which warranted the interference by this Court. Admittedly the newspaper article was highly condemnatory of the 1st appellant and injured him in his character and reputation. It was urged upon us that the learned trial Judge should have increased the amount of damages awarded and included therein a sum to mark the Court's disapproval of the second appellant's behaviour, in failing to check the facts and publish a correction.

In Broome v. Cassell& Co. /1972/ 2 W.L.R. 645 Lord Reid at p. 685 said:

> "The only practical way to proceed is first to look at the case from the point of view of compensating the plaintiff. He must not only be compensated for proved actual loss but also for injury to his feelings and for having had to suffer insults, indignities and the like.

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> And where the defendant has behaved outrageously very full compensation may be proper for that. So the tribunal will fix in their minds what sum would be proper as compensatory damages. Then if it has been determined that the case is a proper one for punitive damages the tribunal must turn its attention to the defendant and ask itself whether the sum which it has already fixed as compensatory damages is or is not, adequate to serve the second purpose of punishment or deterrence. If they think that sum is adequate for the second purpose as well as for the first they must not add anything to it. It is sufficient both as compensatory and as punitive damages. But it they think that sum is insufficient as a punishment then they must add to it enough to bring it up to a sum sufficient as punishment. The one thing which they must not do is to fix sums as compensatory and as punitive damages and add them together. They must realise that the compensatory damages are always part of the total punishment."

We respectfully agree with the foregoing statement and now turn to consider the judgment of the Court below.

We are satisfied from a study of the judgment of the learned trial Judge that he properly directed himself in accordance with the principles set out above and we quote from his judgment:

> "What does worry me is the main caption exaggerating and misconstruing alleged facts which were not true and which was in my view designed to cause or create a sensation so as to advance the sales of the newspaper..... The offending article accuses a landowner of bullying two teachers and forcing them to flee to escape from a "forced labour stint" and from his conduct that had turned Mago Island into a 'Hell Island'.
>
> If the facts reported had been true they should have been exposed but they were false. The third defendant was not concerned to check on the facts before publishing the article. The third defendant's irresponsibility and lack of honesty may be judged by the fact that it quoted the general secretary of the association Mr. Isimeli Cokanasiga as having made most of the comments. The reporter never spoke to the general secretary or received any communication from him. The reporter

spoke only to Mr. Celia an executive officer in the Association who told the reporter she could use the name of the general secretary."

In our opinion the learned Judge correctly applied the principles to be followed, and conclude that there is no justification for interference on our part with the award of damages made by the learned trial Judge in favour of 1st appellant against the 2nd respondent.

Accordingly ground 1 fails.

The 2nd ground of appeal alleges that the learned trial Judge was in error in deciding that the two separate items of news on Saturday 18th February 1978 and Wednesday 22nd February 1978 by the Fiji Broadcasting Commission were not defamatory of the 1st appellant. The broadcasts were made in three languages - English, Fijian and Hindi; on 18th February 1978 the news item was broadcast at 12.30 p.m., 1.25 p.m. and 7.10 p.m. The text of the broadcast reads as follows:

"The Fijian Teachers' Association has called on the Ministry of Education to investigate the dismissals of two teachers from a school on Mago Island, in Northern Lau.

An Association spokesman told Radio Fiji that the two teachers were dismissed by the island's owner, Mr. James Borron.

The spokesman said the two teachers had voted that they would never set foot on the island again.

The Fijian Teachers' Association said this was not the first time that Mr. Borron had acted in this manner."

On Wednesday 22nd February 1978 the 2nd respondent broadcast the following news item:

"The Secretary for Education, Mr. Filipe Bole says his Ministry has yet to receive an official complaint from the Fijian Teachers' Association over the dismissal of two teachers from Mago Island in Northern Lau.

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The two teachers, returned to Suva last week vowing never to set foot again on Mago Island.

They claimed that they were told to leave by the island's owner, Mr. James Borron.

The Association has called on the Ministry for Education to conduct an investigation into the teachers' claims."

The learned Judge held that neither of the news items broadcast by the Fiji Broadcasting Commission was defamatory of the 1st appellant and dismissed the 1st appellant's claim for damages with no order as to costs as the learned Judge found that the news items were broadcast without first checking the correctness of the information contained therein; that the news items were untrue and the 1st respondent pleaded (inter alia) the facts were true. Mr. Ramrakha submitted that the news items broadcast by the first respondent which were untrue were defamatory of the 1st appellant; and would be understood to mean that the 1st appellant was a tyrant; that the reputation and the character of the 1st appellant was lowered in the estimation of right-thinking members of society generally; that he was unworthy to act as a manager of a school; that he had previously unfairly dismissed teachers from the school.

Mr. Sweetman for the 1st respondent submitted that the learned Judge was correct in rejecting the 1st appellant's claim for damages against the Fiji Broadcasting Commission. That the articles were not defamatory of 1st appellant and that nothing contained therein would lower 1st appellant in the opinion of right-thinking people.

The question as to whether words which are complained of are capable of conveying a defamatory meaning is a question of law; this question is one for the trial Judge to determine. In Hopwood v. Muirson /T945/ 1 K.B. 313 at p. 316 Lord Goddard C.J. said:

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> "Whether or not words are capable of bearing a defamatory meaning is always for the court and is therefore to be regarded as a question of law.

If the words are capable of conveying a defamatory meaning then it is a question to decide whether the words do in fact, convey a defamatory meaning. In deciding whether words are capable of conveying a defamatory meaning the Court will reject those meanings which can only emerge as the product of some strained or forced or utterly unreasonable interpretation.

In Capital & Counties Bank v. George Henty & Sons /1881/ 7 App. Cases 741 Lord Selbourne at p. 745 said:

> "The test, according to the authorities, is whether under the circumstances in which the writing was published, reasonable men, to whom the publication was made, would be likely to understand it in a libellous sense."

In considering this question it is not enough to say that by some person or another the words might be understood in a defamatory sense. (Nevill v. Fine Art and General Insurance Co. /1897/ A.C. 68.)

In Stubbs Limited v. Russell /1913/ A.C. 386 Lord Shaw said at p. 398:

> "Is the meaning sought to be attributed to the language alleged to be libellous one which is a reasonable, natural, or necessary interpretation of its terms? It is productive, in my humble judgment, of much error and mischief to make the test simply whether some people would put such and such a meaning upon the words, however strained or unlikely that construction may be. The interpretation to be put on language varies infinitely. It varies with the knowledge, the mental equipment, even the prejudices, of the reader or hearer; it varies - and very often greatly varies - with his temperament or his disposition, in which the elements, on the one hand, of generosity or justice, or, on the other, of mistrust, jealousy, or suspicion, may play their part. To permit, in the latter case, a strained and sinister interpretation, which is thus essentially unjust, to form a ground for reparation, would be, in truth, to grant reparation for a wrong which had never been committed."

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In Gatley on Libel and Slander 7th Edition at paragraph 93 the learned authors state:

> "Words are normally construed in their natural and ordinary meaning, i.e. in the meaning in which reasonable men of ordinary intelligence, with the ordinary man's general knowledge and experience of wordly affairs, would be likely to understand them. The natural and ordinary meaning may also "include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction would draw from the words."

Any statement is defamatory if it tends to lower the individual to whom it refers in the estimation of right-thinking persons generally or to bring him into hatred ridicule or contempt. In Tournier v. National Provincial & Union Bank of England /1924/ 1 K.B. 461 both Scrutton L.J. and Atkin L.J. considered that this "ancient formula was not sufficient in all cases for words may damage the reputation of a man as a business man which no one would connect with hatred ridicule or contempt."

1st appellant pleaded innuendoes as follows:

"9. By the said words the defendants meant and were understood to mean:-

1) That the plaintiffs were unworthy to run a School at all, and that in particular the first named plaintiff was unworthy to be a school manager, and that the plaintiffs were behaving in a tyrannical manner whereby teachers employed by the Government of Fiji at the said School were unfairly treated;

2) That the plaintiffs had habitually dismissed the teachers from the School unfairly and without cause;

3) That the plaintiffs indulged in forced labour on the Island, and that they made the Island a 'Hell Island' were treated in convention of modern labour laws, and were undergoing a form of slavery, and were deprived of their constitutional rights. By reason of the premises the plaintiffs have been gravely injured in their character, credit and reputation, and in the way of their said business

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and have been brought into public scandal odium and contempt and have suffered damages."

The pleading does not distinguish between the article in the "Fiji Sun" and the broadcasts by the Fiji Broadcasting Commission. No special or material facts have been pleaded or proved in evidence which will support these innuendoes as true innuendoes so it must be taken that the pleading is in the form of a popular innuendo. An innuendo may be of two kinds, the first kind commonly called a "false" or "popular" innuendo is no more than an explicit pleading of one or more defamatory meanings which a plaintiff alleges that the actual words published by a defendant are capable of bearing in their ordinary and natural sense. The second kind of innuendo commonly called a "true" innuendo or "legal" innuendo is a defamatory meaning alleged to have been conveyed by the published words when read in the light of extraneous circumstances.

Reference to Gatley on Libel & Slander 7th Edn. p.48 para.95 explains the distinction between "false" and "true" innuendoes. The passage reads:

> "If however the plaintiff wishes to rely on any special facts as giving the words a defamatory or any particular defamatory meaning, he must plead and prove such facts, including, where necessary, any special knowledge possessed by those to whom the words were published which gives the words that meaning, and must set out the meaning in his pleading.....Such an extended meaning is described as a "true" or "legal" innuendo. There may also be cases in which the ordinary and natural meaning of words only arises from them by inference or implication; it will be necessary in most such cases for the plaintiff to plead the meaning he ascribes to the words. Such a meaning has been described as a "false" innuendo. "

If the defamatory meaning relied on is inferential (a "popular" or "false" innuendo) it is desirable and may even be necessary to plead the defamatory meaning. (Allsop v. Church of England Newspaper [1972] 2 All E.R. 26.)

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Lord Devlin in Lewis v. Daily Telegraph Ltd. [1963] 2 All E.R. 151 at p.171 said :

> ".....'I am satisfied that the pleading of an innuendo in every case where the defamatory meaning is not quite explicit is at the least highly desirable.....'
> 'I understand your lordships all to be of the opinion that the pleading of the ordinary or popular innuendo is permissible, but do not intend that the House should rule on whether it is necessary. I agree that the point does not arise directly in this case, and, therefore, I, too shall reserve my judgment on it. But I make the comment that, if it is not necessary it is nevertheless a form of pleading universally used from the earliest times until 1949, and I can see nothing in the new rule that should alter so well established a practice.' "

Since that case, the same view was well expressed by Salmon L.J. in Slim v. Daily Telegraph Ltd. [1968] 2 Q.B. 157 at p.185:

> " 'After all, there may be many opinions as to what inference words bear. It would be unfair to expect the defendant to guess which meaning or meanings the plaintiff intends to attribute to them. He might guess wrong, and thus not only waste a great deal of time and money in raising a defence of justification or fair comment which would prove to be wholly irrelevant at the trial but he might also come to court wholly unprepared to meet the actual case sought to be made against him.' "

Where a plaintiff relies upon the natural and ordinary meaning of the words as bearing a defamatory meaning such meaning is treated at the trial as the most injurious meaning which the words are capable of bearing and a plaintiff is in effect estopped from contending that the words bear a more injurious meaning and claiming

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damages on that basis. But the averment does not of itself prevent a plaintiff from contending at the trial that even if the words do not bear the defamatory meaning so alleged in the statement of claim to be the natural and ordinary meaning of the words they nevertheless bear some other meaning less injurious to the plaintiff's reputation but still defamatory of him.

In Slim v. Daily Telegraph Ltd. /1968/ 2 Q.B. 157 Diplock L.J. said at p.176:

> "Where an action for libel is tried by judge and jury, it is for the parties to submit to the jury their respective contentions as to what is the natural and ordinary meaning of the words complained of, whether or not the plaintiff's contention as to the most injurious meaning has been stated in advance in his statement of claim. And it is for the judge to rule whether or not any particular defamatory meaning for which the plaintiff contends is one which the words are capable of bearing. The only effect of an allegation in the statement of claim as to the natural and ordinary meaning of the words is that the judge must direct the jury that it is not open to them to award damages upon the basis that the natural and ordinary meaning of the words is more injurious to the plaintiff's reputation then the meaning alleged, although if they think that the words bear a meaning defamatory of the plaintiff which is either that alleged or is less injurious to the plaintiff's reputation, they must assess damages on the basis of that natural and ordinary meaning which they think is the right one. But where a judge is sitting alone to try a libel action without a jury, the only questions he has to ask himself are: 'Is the natural and ordinary meaning of the words that which is alleged in the statement of claim?' and: 'If not, what, if any, less injurious defamatory meaning do they bear?' ".

In our opinion while a different situation arises in respect of the "Fiji Sun", the innuendoes alleged cannot

be supported in the case of the broadcasts. The result is that no innuendo properly supported by the broadcasts themselves can be read into them. The 1st appellant must therefore rely upon the natural and ordinary meaning of the words as conveying a defamatory imputation on 1st appellant's character or reputation.

Turning to the texts of the broadcasts; the allegation conveyed by the words is that the 1st appellant as manager of the school on Mago Island had unfairly dismissed two teachers therefrom and that previously he had acted in a like manner; that the 1st appellant was unworthy to be the manager of the school; that the 1st appellant had ordered the teachers to leave the island and they vowed never to return.

Mr. Ramrakha urged upon us that the inference to be taken from the news items was that the fair minded listener would conclude that the two teachers had suffered such indignities at the hands of the 1st appellant as to warrant their solemn resolve never to return to Mago Island; further that the fair minded listener would reasonably believe that the 1st appellant was a tyrannical, dictatorial and intolerant person which would bring him into contempt and lower his reputation among right thinking people.

The question calling for consideration is, however, whether a fair minded listener, not being a person with a suspicious mind would infer from these broadcasts that the 1st appellant had been guilty of some improper conduct. In our opinion there could be any one of a number of reasons why a school manager may peremptorily dismiss teachers - and in so doing such actions may well reflect adversely upon the persons dismissed rather than

upon the author of the dismissals. The Fijian Teachers Association was calling for an investigation into the dismissal of the teachers, and the fair minded listener could reasonably be expected to assume that all the facts would be gone into at such an inquiry without in so doing denigrating the reputation or character of the 1st appellant.

The learned Judge found as a fact that the 1st appellant had not dismissed the teachers nor had he ordered them to leave the Island.

The test as to whether words are capable of being understood in a defamatory sense is not whether some people would put a sinster construction upon them but whether they would be so understood by a fair minded reasonable person.

We pose the question - would any ordinary fair minded listener, not unduly suspicious and nor over astute to seek out a hidden meaning, regard the 1st appellant as a tyrannical person with the result that his reputation and the estimation in which he stands in the opinion of others would be lowered. We would answer the question posed, in the negative. The news items when read and examined as a whole in the plain ordinary and natural sense could not in our opinion reasonably be considered defamatory of the 1st appellant by the normal fair minded listener.

Accordingly we agree with the learned Judge when he said :

> "I do not consider either article broadcast by the second named defendant is defamatory of the plaintiffs or either of them. While it was not true that Mr. Borron dismissed the two teachers such a misstatement in my view raises no imputation against his reputation. The article does not in my view 'tend to lower the plaintiff in the estimation

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> of right thinking members of society generally' (per Lord Atkin in Sim v. Stretch [1936] 52 T.L.R. at p.671) or 'to expose him to hatred, contempt or ridicule' (per Parke B in Parmiter v. Coupland [1840] 6 M. & W. at p.108)."

Ground 2 fails.

Counsel for appellant in arguing Ground 3 of the notice of appeal submitted that the 2nd appellant, Mago Island's Estate Ltd. had been libelled by both the 1st and 2nd respondents and that the learned Judge erred in not awarding damages to the Company.

A company may maintain an action for libel in the same way as an individual, but the imputation must reflect upon the company and not its members; it can maintain an action for libel for any words which are calculated to injure its reputation in the way of its trade or business and without proving special damage. In South Hetton Coal Company v. North Eastern News Association [1894] 1 Q.B. at p.141 Lopes L.J. said:

> "I am of opinion that, although a corporation cannot maintain an action for libel in respect of anything reflecting upon them personally, yet they can maintain an action for a libel reflecting on the management of their trade or business, and this without alleging or proving special damage. The words complained of, in order to entitle a corporation or company to sue for libel or slander must injuriously affect the corporation or company as distinct from the individuals who compose it..... The words complained of must attack the corporation or company in the method of conducting its affairs, must accuse it of fraud or mismanagement, or must attack its financial position."

The 1st respondent - in broadcasting the two news items did not mention the 2nd appellant at all -it referred to Mago Island as being owned by 1st appellant,

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who is a major shareholder in the 2nd appellant, Mago Island Estates Ltd. In the Court below the learned Judge said :

> "The Borron family have owned the island since 1898 and from references made by witnesses in this action I gathered that the fact that the island is owned by the company is not public knowledge. The public refer to 'Borron's island' ."

Mr. Ramrakha submitted that although the island was generally known as Borron's Island there were people who traded with the Company who would know that it was the owner of the island and to refer to it as Hell Island was a serious libel upon the Company. However, it was 1st appellant - James Borron - who was the butt of the article published by the newspaper and the learned Judge said :

> "the whole article must be read and considered from which it is made clear that it was alleged the school committee and Mr. Borron had made Mago Island a 'Hell Island' for teachers. It is the company's managing director who is attacked in the article and the words reflect upon him but that per se does not give the company a right of action for libel."

Having read the record and considered the judgment in the lower court, we are of the opinion that the learned trial Judge was correct in dismissing the action brought by the 2nd appellant against the Fiji Broadcasting Commission and we find no reason to disturb his findings thereon.

The appeal brought by the 2nd appellant against the 1st respondent is dismissed accordingly.

An attempt was made in the lower court to prove that the Company as a trading corporation had as a result of the libel appearing in the "Fiji Sun" newspaper found it difficult to recruit labour; that there had been a loss of production and accordingly an award of damages against the 2nd respondent should be made in favour of the Company.

The learned Judge dealt with this matter fully in the judgment under appeal and concluded - andwe quote :

> "The company is a trading corporation but I do not consider the article read as a whole injures or tends to injure its trading character.....I do not consider the "Fiji Sun" article defamatory of the second plaintiff.....The second named plaintiff's claim is dismissed with no order as to costs."

We have no reason to differ from the learned Judge's treatment of the evidence, his findings thereon and the conclusion to which he came. Accordingly we are in agreement with the learned Judge that the article appearing in the "Fiji Sun" was not libellous of the 2nd appellant and its appeal against the 2nd respondent fails.

In the result for the reasons we have given -

(a) the appeals by 1st appellant against the 1st respondent and the 2nd respondent are dismissed with costs (in this Court) to be taxed if not agreed.

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(b) the appeals by 2nd appellant against the 1st respondent and the 2nd respondent are dismissed with costs (in this Court) to be taxed if not agreed.

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(Judge of Appeal)

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(Judge of Appeal)

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(Judge of Appeal)