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IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
 AT LAUTOKA
 Civil Jurisdiction
Action No. 214 of 1976

BETWEEN:

SATENDRA KUMAR s/o Shiu Pal Plaintiff
 -and-
KURIAPPAN s/o Paranje Defendant

Mr. G.P. Shankar, Counsel for the Plaintiff
 Dr. M.S. Shau Khan, Counsel for the Defendant

JUDGMENT

The plaintiff was the tenant of the defendant at \$28 per month. It is not disputed that the defendant increased the rent to \$30.00 per month and that the plaintiff complained to the P.I.B. and the defendant was prosecuted.

During this period the plaintiff was allegedly locked out of his premises by the defendant affixing a padlock to the door during the plaintiff's absence. The defendant denies having been responsible for this.

The plaintiff's evidence shows that he was locked out about 10.30 P.M. on 20.9.76 and he instituted these proceedings on 4.10.76, which claim special damages and injunction restraining the defendant from interfering with the plaintiff's use and enjoyment of the premises and exemplary damages.

On 5.10.76 a summons for an interim injunction was filed along with the plaintiff's supporting affidavit.

On 8.10.76 the parties appeared before Stuart J. who was informed that the padlock had been removed and that the plaintiff was able to re-enter his flat. No interim injunction issued.

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The defendant in evidence has denied that he locked out the plaintiff and in that he was supported by his daughter Margaret. It appears to me that the defendant, having been prosecuted by the P.I.B. at the plaintiff's instigation had some motive. Moreover it is unlikely that the plaintiff would have instituted proceedings of this nature had he not suffered inconvenience. Having heard the plaintiff and his witnesses I formed the opinion that they were truthful and I have no hesitation in coming to the opposite conclusion in regard to the defendant and his daughter Margaret.

I find that on 20.9.76, at night the plaintiff was locked out of his flat by the defendant and that he was dispossessed for some days. He claims that he was locked out from 20.9.76 to 4.10.76, the date of the writ. However, he does say that during this period he met the defendant in town and the latter told him the lock would be removed and he could get his things on that day. The plaintiff did not know which day that was but says it was the first or second Tuesday after Friday 20th September which latter date was the day on which he was locked out. At the most it was/period of 10 days; or it could have been as little as four days. It is for the plaintiff to prove his case and since he is in considerable doubt I find that it was four days after he was locked out that the defendant told him he could collect his things. However, the plaintiff did not take advantage of this, and did not enter the premises until 9.10.76 which was the day after the parties had appeared in Court on the application for an injunction.

The plaintiff was earning \$35.00 per week at the time and he claimed \$120.00 for loss of earnings as part of his special damages. His advocate, Mr.G.P. Shankar, agreed that this part of the claim for special damages was greatly exaggerated and that there was no evidence to support the rest of that part of the claim. The reason for the loss of earnings was that the key to the plaintiff's tool box - he is an electrician - was

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locked in the house. However, the tool box is fastened with a padlock which I feel would not have been an insurmountable obstacle to his gaining access to his tools. I disallow the entire claim for special damages.

There is however, a claim for exemplary damages, that is to say for something more than the ordinary compensatory damages. The three categories of cases in which exemplary damages may be awarded were set out in *Rookes v. Barnard* 1964 A.C. 1129 was approved by the House of Lords in *Cassell v. Broome* 1972 1 A.B.R. 801. They show that exemplary damages may be awarded where (i) the wrongdoer is a Government servant or quasi-government servant, local government officer and the like; (ii) the tort is committed in order to make a profit; (iii) where statute authorises it. Clearly the defendant's actions do not come under any of those three heads.

However, compensatory damages may be enhanced by the aggravating conduct of the wrongdoer viz. his motive or the manner in which he acted. Lord Diplock in *Cassell v. Broome* (supra) p.873, described the manner justifying aggravated damages as covered by such epithets as wilful; high-handed, oppressive, malicious, outrageous and where there has been a total disregard of the plaintiff's rights.

In this case the plaintiff and his wife were locked out of their home by defendant (their landlord). There can be no doubt that the defendant was annoyed because the plaintiff had caused the P.I.B. to institute proceedings against him. His act was clearly high handed and malicious; it showed a total disregard of the plaintiff's rights and caused the plaintiff and his wife considerable inconvenience. They were locked out of their rightful home for several days and probably did not feel safe until the court was informed on 8.10.76 that the padlock had been removed. In my view the plaintiff is entitled to aggravated damages.

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In assessing damages I believe I am entitled to take into account the background, social standing and way of life of the parties. Neither side is even moderately affluent. It is not suggested that the public were caused to regard the plaintiff with odium. The plaintiff's earnings of \$35.00 per week put him in a low income group. The defendant is over 80 years and very feeble; his financial and social status is indicated by his letting part of his small house to the plaintiff for \$28.00 per month.

I assess the plaintiff's damages at \$200.00. The defendant will pay the plaintiff's costs which I fix at \$90.00.

LAUTOKA,
28nd March, 1978.

(sgd.) J.T. Williams,
JUDGE

Mesars. G.P. Shankar, & Co., For the Plaintiff
Mesars. Sahu Khan & Sahu Khan for the Defendant

Date of Hearing: 23rd February, 1978