IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Civil Action No. 866 of 1982

Between:

RATU SIR KAMISESE MARA K.B.E. Plaintiff
Prime Minister of Fiji

and

1. FIJI TIMES & HERALD LIMITED
2. GARRY BARKER
3. VIJENDRA KUMAR Defendants

Messrs B.J. Larbalestier, Q.C., S. Stanton & G.P. Lala
for the Plaintiff

Mr. B.N. Sweetman for the Defendants

J U D G M E N T

This is an action for libel in which the plaintiff is the Prime Minister of Fiji and the defendants are respectively the Fiji Times & Herald Limited, the proprietor of the "Fiji Times", a newspaper in circulation in Fiji, Mr. Garry Barker, the publisher of the newspaper and Mr. Vijendra Kumar, its editor. The case arises out of the publication in the issue of the "Fiji Times" of the 27th September, 1982 of a letter to the editor under the name of Rakesh Chandra Sharma. I set out the letter herein as it appears in the pleadings. For the sake of easy reference the letter has been divided into numbered paragraphs which do not appear in the original:

1. "Sir, Senator Inoke Tabua's insensitive remarks about deporting certain Fiji Indian leaders is unbecoming of a man who is the Prime Minister's nominee in the Senate.

2. The sad thing really is that the Prime Minister has not seen it fit to rebuke the Senator for his outburst which is not conducive to the promotion of multiracialism in the country.

3. It is worth remembering that in 1974, Mr. Sakiasi Butadroka was castigated by the Alliance Party of which he was then a member, and ostracised by the majority of the people of Fiji for his similarly racist outburst. Will Senator Tabua face a similar situation?

4. Unfortunately, Senator Tabua's brand of racism is becoming all too familiar now. It seems to become the pattern for all and sundry to make derogatory remarks about Indians, apparently under the illusion that the Indians will not retaliate. It is a dangerous self-deception, for any community however divided, selfish and insecure, can take insults only to a certain degree.

5. In this case, if Senator Tabua or anyone else thinks that Indians can easily be deported to another country, they are deluding themselves. There cannot be another Uganda in Fiji for obvious historical and economic reasons.

6. In addition, the Fiji Indians have made more than their share of contribution to the country, which they will not give up easily. It will be more fruitful to stop talking about deporting people and living in a make-believe world and think seriously about how both Fijians and Indians can live together, to work towards solutions of problems facing us now.

7. Mr Jai Ram Reddy has been the target of the Alliance wrath in recent weeks. He has been one person singled out as having insulted Fijian people.

8. Some correspondents in this column have exposed the raucuosness of his argument in relation to the 4 Corners programme. It needs no further comment.

9. Another incident that Senator Tabua was no doubt thinking of when he made his outburst was the 'toilet' remark. Mr Reddy made that remark in the heat of the moment, about another politician, rather than about a high Lauan chief.

10. It is sad that such a simple fact cannot be realised by the people of this country. It is not Mr Reddy's

problem if Ratu Sir Kamisese Mara wants to mix his traditional and modern political roles.

11. Ratu Sir Kamisese portrayed himself as the injured party, insulted by Mr. Reddy. But let us pause for a moment and go back to the first day of campaigning for this election. It was April 28 I believe, when both the Coalition and the Alliance launched their campaigns in Nausori.

12 It was in Koroqaqa on the very first day of campaigning that Ratu Sir Kamisese promoting the candidature of Senator Kuar Battan Singh spoke disparagingly of Mr Sharda Nand as 'atta baba' a contemptous reference to Mr Nand's involvement in the Flour Mills of Fiji Case.

13. Is that not character assassination of a man who had been proven not guilty by the due process of law.

14. Who planted hecklers in Coalition meetings, who slipped in filthy notes beneath doors in Lautoka? Who has talked of the Russian connection without producing a shred of evidence?

15. No, the story is different from the one the Alliance would have the public of Fiji believe. We like to think of ourselves as living in a democratic country, so let us observe the rules of the game.

16. Let us not obfuscate issues by confusing ritual with reason, principles of ascribed status with the fundamental principles of democracy. It is sad that people of Senator Inoke Tabua's wisdom use the highest forum of debate in the country to make racial statements to appeal to a section of Fiji's population, or to get a renewal of a Senate seat.

17. I think the citizens of this country surely deserve more than this. We should do something about it. "

It will be convenient to refer to the above as "the published letter".

The writ was issued on the same day as the newspaper containing the published letter appeared. In the Statement of Claim filed with the writ, a complaint was made against the matter contained in paragraphs 1, 2 and 14 of the published letter.

A Defence was filed and an order for directions made on 5th January, 1983. Subsequently, on the 10th May the plaintiff applied for leave to amend his Statement of Claim. In the proposed amendment the same paragraphs in the published letter were cited as containing the defamatory matter. The application was heard on the 16th August when Kermode J. gave leave to the plaintiff to file an Amended Statement of Claim. By some means, the draft Amended Statement of Claim attached to the application became converted into a "Further Amended Statement of Claim" bearing the date 12th August, 1983. This document contained material differences, including the recitation of the whole of the published letter. To the Further Amended Statement of Claim a new Defence was filed on the 22nd August on behalf of the 1st, 2nd and 3rd defendants.

When the matter came up for trial on the 31st October, Mr. Larbalestier, Q.C., appearing for the plaintiff, applied for leave to file a Further Amended Statement of Claim. The effect of this new document submitted was to enlarge upon the submissions as to the natural and ordinary meaning of the words, the subject of the complaint. Mr. Sweetman for the defendants did not object to the amendment provided he was given an opportunity to file an amended Defence. I thereupon made an order permitting the amendments. The defendants who up to that time had been relying upon the sole defence that the publication was not defamatory took the opportunity in their amended Defence to raise the additional pleas of fair comment and qualified privilege. The defendants added certain particulars which I shall assume were intended to comply with Order 82 rule 3(2) of the Rules of the Supreme Court. It is to be noted that counsel for the plaintiff did not seek leave to file a reply. Nonetheless, in the course of his argument counsel submitted that in printing the published letter the defendants were actuated by express malice. Counsel appears to have overlooked the requirement of Order 82.3(3) which is mandatory and in the absence of a reply and the necessary particulars he cannot now be heard to allege express malice.

I may add that after the plaintiff had given evidence at the trial, Mr. Larbalestier applied for leave to make yet further amendments to his Statement of Claim which application was disallowed for reasons already given.

The general effect of the series of amendments and attempted amendments which I have recounted is to create the impression that the plaintiff's legal advisers were and remain uncertain as to the nature and extent of the libel alleged to have been published concerning their client. No such uncertainty appears to have afflicted the plaintiff.

In the course of his evidence the plaintiff said:

> "I did not nominate Senator Tabua. He was appointed by the Great Council of Chiefs. I have nothing to do with Senator Tabua's remarks. "

And in cross-examination:

> "My view was that the first paragraph was an excuse to expose me in the letter..... The appointment was not made by me ..... Anyone could have found out the truth and I assume it was done purposely ..... I believe it was a deliberate mistake ..... I could not believe that a reputable paper would not be able to check the facts and allow a letter such as this to be published..... The allegation that Tabua is my mouthpiece is damaging ..... People would ascribe to me the views of the Senator because it was alleged I had appointed him. "

The tenor of his evidence discloses that the plaintiff felt deeply that the mis-statement that he had nominated Mr. Tabua to the Senate was injurious to him. He gave me the impression that this is what he objected to most about the published letter.

It is ironical that in his opening address Mr. Larbalestier conceded that although Senator Tabua was a nominee of the Great Council of Chiefs and not of the Prime Minister of Fiji that error of fact was not in itself

defamatory of the plaintiff.

Paragraph 5 of the Statement of Claim sets out 17 distinct defamatory imputations which it is alleged are conveyed by the natural and ordinary meaning of the words set out in the published letter. I do not propose to set down herein all these alleged imputations. The case for the plaintiff is that the letter-writer meant by the words used that the views, said to have been expressed by Senator Tabua in a speech in the Senate, were used by the Senator under the direction of the plaintiff and that the plaintiff held the view that Fijian Indians should be deported, that he was dishonest, a racist, a bigot, a troublemaker, unfit to hold high office, a hypocrite, a person opposed to democratic principles and practices and a man who resorted to character assassination by making false allegations against a political candidate. There is more of it in a like vein.

Senator Tabua was not called as a witness at the trial. Mr. Sweetman for the defendants tendered in evidence a Hansard report of a speech made by Senator Tabua on the 15th September, 1982. Mr. Larbalestier objected to the production of the Hansard report on the grounds that the Senator's remarks were irrelevant to the present proceedings. That objection was overruled.

I have had time to reflect upon the matter and I have reached the conclusion that the Hansard report should not have been admitted in evidence, not, on account of its irrelevance but because the report itself is inadmissible hearsay. If Mr. Sweetman had wished the speech to be included as an exhibit, he ought to have called Senator Tabua as a witness. That being the case I have disregarded entirely for the purposes of this judgment the Hansard report containing the speech of Senator Tabua.

However, it is not denied by any party that Senator Tabua made a speech in the Senate on the date in

question in the course of which he advocated the deportation from Fiji of certain Indian leaders on account of events which he alleged had taken place during the general election campaign earlier in that year.

Mr. Kumar the 3rd defendant in his evidence said that the Senator's remarks had been given considerable publicity and were a matter of public debate. This is not surprising. Senator Tabua (if he was correctly reported) was advocating that the Government of Fiji, headed by the plaintiff as Prime Minister, should embark upon a policy of deporting its own citizens. Not only would such a course, if adopted by any government, be unconstitutional and illegal, but, it would adversely affect Fiji in its international relations. It is the accepted norm of behaviour among civilized nations that they do not deport their own citizens.

Some people may have been pleased by Senator Tabua's proposal, others may have felt resentful, but, whatever view was taken of the Senator's speech it was a matter of public interest and concern. The reaction of other people in public life including the Prime Minister to the speech was similarly a matter of public interest.

It is not disputed that the plaintiff as Prime Minister did not make any public comment on what the Senator said. He has explained to this Court his attitude in that regard. I have nothing to say as to whether the silence of the Prime Minister on the issue was justified in political terms or not.

My duty in this case is to decide in the first place whether the words contained in the published letter in their natural and ordinary meaning are in fact defamatory of the plaintiff.

In Slim v. Daily Telegraph Ltd. (1968) 2 Q.B. 157 at 171 Diplock L.J. said :

"Libel is concerned with the meaning of words. Everyone outside a court of law recognises that words are imprecise instruments for communicating the thoughts of one man to another. The same words may be understood by one man in a different meaning from that in which they are understood by another and both meanings may be different from that which the author of the words intended to convey. But the notion that the same words should bear different meanings to different men and that more than one meaning should be 'right' conflicts with the whole training of a lawyer. Words are the tools of his trade. He uses them to define legal rights and duties. They do not achieve that purpose unless there can be attributed to them a single meaning as the 'right' meaning. And so the argument between lawyers as to the meaning of words starts with the unexpressed major premise that any particular combination of words has one meaning which is not necessarily the same as that intended by him who published them or understood by any of those who read them but is capable of ascertainment as being the 'right' meaning by the adjudicator to whom the law confides the responsibility of determining it.

That is what makes the meaning ascribed to words for the purposes of the tort of libel so artificial. In the present appeal, although legal innuendoes (see Lewis v. Daily Telegraph Ltd. [1964] A.C. 234) have been pleaded, no reliance has been placed in the argument upon them. The whole discussion has been about the 'natural and ordinary meaning' of the words used in the letters. What is the 'natural and ordinary meaning' of words for the purposes of the law of libel? One can start by saying that the meaning intended to be conveyed by the publisher of the words is irrelevant. However evil the imputation upon the plaintiff's character or conduct he intended to communicate, it does not matter if, in the opinion of the adjudicator upon the meaning of the words, they did not bear any defamatory meaning. However innocent an impression of the plaintiff's character or conduct the publisher of the words intended to communicate, it does not matter if, in the opinion of the adjudicator upon the meaning of words, they did bear a defamatory meaning. This would be rational enough if the purpose of the law of libel were to afford compensation to the citizen for the unjustifiable injury to his reputation actually caused by the publication of the words to those to whom they were communicated. But although in assessing damages the courts now accept this as the purpose of the civil action (see Rookes v. Barnard [1964] A.C. 1129; [1964] 2 W.L.R. 269; [1964] 1 All E.R. 367, H.L.(E.) and McCarey v. Associated Newspapers Ltd. (No.2) [1965] 2 Q.B. 86; [1965] 2 W.L.R. 45; [1964] 3 All E.R. 947, C.A.), we refuse to accept its logical corollary that the relevant question in

determining liability for libel is: 'What did those to whom the words were published actually understand them to mean?' The best evidence of that would be the evidence of the persons to whom the words were actually published. Yet, save in exceptional cases where a 'legal' innuendo is relied on, it is not even permitted to ask a witness to whom the words were published: 'What did you understand them to mean?' What he did actually understand them to mean does not matter. This too might be rationalised on the ground that the publisher of the words ought to be responsible in law only for the injury caused to the plaintiff's reputation by those defamatory inferences which a reasonable man might draw from the words published, and the witness to whom the words were published may not have been reasonable in drawing the defamatory inferences which he in fact drew. But this rationalisation breaks down once it is conceded, as it has been by the House of Lords in Lewis v. Daily Telegraph [1964] A.C. 234 that one man might be reasonable in drawing one defamatory inference from the words and another man might be reasonable in drawing another defamatory inference. Where, as in the present case, words are published to the millions of readers of a popular newspaper, the chances are that if the words are reasonably capable of being understood as bearing more than one meaning, some readers will have understood them as bearing one of those meanings and some will have understood them as bearing others of those meanings. But none of this matters. What does matter is what the adjudicator at the trial thinks is the one and only meaning that the readers as reasonable men should have collectively understood the words to bear. That is 'the natural and ordinary meaning' of words in an action for libel. "

I must assume that the average reader of the "Fiji Times" has some education including a fair knowledge of the public institutions of his country. The Senate is one of the two Houses of Parliament established under the Constitution. All 22 members of the Senate are appointed by the Governor-General acting on the advice of one or other of the following, the Great Council of Chiefs, the Prime Minister, the Leader of the Opposition and the Council of Rotuma.

The Senate is a deliberative assembly with legislative functions. I cannot imagine that any member of the public believes that the Senate consists of persons whose sole function is to echo the views of the persons or

institutions who nominated them for appointment. It follows, therefore, that even if Senator Tabua had been nominated to the Senate by the Prime Minister, the statements in the published letter could not be understood to mean that what the Senator said in the Senate on any occasion was said by him under the direction of the plaintiff. On the contrary the complaint contained in paragraph 2 of the published letter is an indication that the writer believed that Senator Tabua was a free agent able to express his own views. A reader would have understood this also. The words used mean that the Senator was speaking his own mind, that his ideas as expressed were repugnant and that the Prime Minister ought to have rebuked him on that account.

This disposes of the allegation that the natural and ordinary meaning of the words used in the published letter contained the imputations set out in paragraph (5) (a), (b), (c), (d), (e), (f), (g), (i), (j) of the Statement of Claim, some of which appear to me to be fanciful in the extreme. Paragraph 5(h) alleges that the words in the published letter meant:

> "5(h) That the plaintiff was a troublemaker and nothing short of a political activist who stooped to the lowest forms of political agitation. "

I see nothing whatsoever in the published letter which supports this allegation.

Paragraph 5(m) read; :

> "5(m) That the Prime Minister is unfit for office and to be a Member of Parliament because he cheated in the elections by resorting to unfair and improper electioneering tactics. "

I am somewhat at a loss to understand this particular imputation. Much of the published letter contains references to events which, if they took place at all, took place during the course of the general elections of 1982 and about which

hardly any evidence was led during the course of the trial. Undoubtedly, the published letter is a partisan document and it is clear that the writer is opposed to the Prime Minister and his colleagues in the Alliance Party. There are allegations in the published letter that members or supporters of the Alliance Party engaged in reprehensible practices in the course of the election campaign, but, I do not accept that this reflects on the reputation of the plaintiff as leader of that Party. It is well known that political parties attract all manner of people not all of whom are readily subject to discipline. I do not accept that anyone reading the published letter would conclude that the Prime Minister had cheated at the elections and I find that the words used are incapable of bearing that or any other defamatory meaning.

A similar type of allegation is contained in 5(o) :

> "5(o) That the Prime Minister is unfit for office and to be a Member of Parliament because he behaved unfairly at the election by behaving in an improper manner in that he planted hecklers in coalition meeting and slipped filthy notes beneath doors in Lautoka. "

I do not understand the reference to the "filthy notes" and I do not accept that paragraph 14 of the published letter could be understood to mean that the plaintiff was personally responsible for planting hecklers at coalition eetings. It is common knowledge that people go to election meetings to heckle the speakers. There is nothing discreditable about such practices provided the object is not to disrupt meetings. A candidate who cannot handle a heckler is unlikely to make his mark in political life.

5(p) reads as follows :

> "5(p) That the Prime Minister is unfit for office because he was undemocratic and did not obey the rules applicable to democratic society. "

I am not satisfied that any of the words used in the published letter are capable of supporting the imputations alleged. Even if they were, I can only say that it is not defamatory to say of anyone that he is undemocratic. The reference in paragraph 15 to the "rules of the game" are not applicable in the context to the Prime Minister personally.

I refer to paragraphs 11, 12 and 13 of the published letter. These allege that on April the 28th, 1983 at Koroqaqa the plaintiff in the course of a public speech spoke disparagingly of Mr. Sharda Nand and in so doing was indulging in "a character assassination".

It has been held in old cases that to say of a man that he is a libeller or a slanderer and a scandal-monger is defamatory. (Gatley on Libel and Slander 8th Ed. 50). I am satisfied that to impute to a man that he indulges in character assassination is likewise defamatory.

It is unfortunate that the plaintiff's counsel spent so much time pursuing phantom libels and paid so little attention to an obvious one.

The only evidence led in respect of this particular issue is, according to my note, as follows :

Ratu Sir Kamisese Mara

" ..... I was at Koroqaqa promoting the c use of Singh. I made reference to Mr. Nand as 'atta baba' a flour distributor. I understood that was being done in that constituency. Mr. Nand was involved in a Court case in which he was the manager of Flour Mills. I was not referring to the Court case but to the distribution of flour. Mr. Nand was not proved innocent. He was found not guilty."

(If my note as to what plaintiff said is not correct or does not set out fully what was said by the plaintiff in his evidence, this is something for which I must disclaim responsibility. I do not think it appropriate that a Judge

of the Supreme Court should be charged with the responsibility of keeping the record of evidence at criminal or civil trials as the task is not only onerous, but, distracting).

While I am left in some doubt as to what precisely the Prime Minister meant by his reference to flour being distributed in that constituency, it is clear that he did make reference to Mr. Nand at the public meeting and that he made use of the words "atta baba". The writer of the published letter which appeared in the "Fiji Times" misinterpreted the plaintiff's reference to "atta baba" and considered that he was disparaging Mr. Nand. He accused the plaintiff of character assassination which, as I have said, is a defamatory imputation and I must therefore look to the defences raised to see if they afford an answer to the plaintiff's case.

I shall first deal with the alternative allegation under paragraph 7 of the Statement of Claim which reads as follows :

> "7. Alternatively, should it be found that any of the facts stated in the particulars set out hereunder are not either part of the general knowledge of the community to whom the matter complained of was published or stated (expressly or impliedly) in the matter complained of itself such meanings are true innuendos based upon the said facts as well as those which are found to have been stated (expressly or implied y) in the matter complained of itself.
>
> PARTICULARS PURSUANT TO ORDER 82 SUPREME COURT RULES
>
> (i) The plaintiff has been a national figure for a considerable number of years both as a politician and as the leader of his nation.
>
> (ii) The plaintiff is a native Fijian and has as such promoted the interests of both the Fijian Indians and the Fijian natives and has advocated a multi-racial society for all of his public life.

(iii) The plaintiff was at that time and at all material times the Prime Minister of the nation and was constantly in the public spectrum.

(iv) The plaintiff never appointed Senator Tabua as his nominee. "

An innuendo only arises where the words used in the publication convey a defamatory imputation only by reason of some special knowledge available to those to whom they were published or of some special meaning or inference to be attached to or drawn from the words. Order 82 rule 3(1) requires the plaintiff who alleges that the words and matters complained of were used in a defamatory sense other than their ordinary meaning to give particulars of the facts and matters on which he relies in support of such sense.

The particulars given in this instance as set out above are matters of common knowledge in Fiji and are not in any way disputed. I am quite unable to find that the facts and matters pleaded change or alter in any way whatsoever the natural or ordinary meaning of the words used in the published letter. That being the case there is no substance in the submission made as to the existence of any innuendo whether true or false. Paragraph 7 of the Statement of Claim adds nothing to the plaintiff's case and need not be considered further.

The Defence as amended reads as follows :

"10. If the said words are defamatory as pleaded (which is denied) then they constitute fair comment on a matter of public interest namely the speech of a Senator made in the Senate of Fiji and other incidents in the General Election Campaign.

11. If the said words are defamatory as pleaded (which is denied) then they were printed and published by the Defendants on an occasion of qualified privilege.

PARTICULARS

1. A speech was made in the Senate by Senator Inoke Tabua criticising Indian leaders and calling for their deportation.

2. The writer of the letter was an Indian.

3. He was communicating through the Letters to the Editor column of The Fiji Times his reply to the speech made by Senator Inoke Tabua.

4. The publication was communicated to other persons who had a common interest with the writer in the subject matter of the letter.

5. The writer of the letter and members of the general public had a legitimate interest in the subject matter of the letter. "

The particulars given above need not have been given under Order 82.3(2) because the plea offered was not what has been described as the "rolled-up" plea to which the sub-order particularly relates. The particulars have no application to the plea of fair comment in this instance, as they are directed to parts of the published letter which I have already held were not defamatory of the plaintiff.

The conduct of the Prime Minister, including speeches made by him at public meetings in the course of an election campaign are matters of public interest. It has been said that "One who undertakes to fill a public office offers himself to public attack and criticism, and it is now admitted and recognised that the public interest requires that a man's public conduct shall be open to the most searching criticism". (Per Bain J. in Manitoba Press Co. v. Martin (1892) 8 Manitoba R. at 70 quoted by Gatley p.732).

The position appears to me to be thus. The plaintiff at an election meeting referred to Mr. Nand as "atta baba" because he understood that Mr. Nand was distributing flour in his constituency. I have no doubt that the plaintiff intended his remark to be a disparagement of Mr. Nand. He was, of course, perfectly entitled

to attack a political opponent. The writer of the published letter assumed that the words "atta baba" intended a reference to Mr. Nand's involvement in a criminal case involving Flour Mills of which firm Mr. Nand was the Manager. The writer considered the plaintiff's reference, as he understood it, to be unfair to Mr. Nand whom he declared to be an innocent man. He accused the Prime Minister of character assassination in a rhetorical question. Was this a comment or a statement of fact and if it was the former, was it fair?

Freedom of speech and association are generally regarded highly among the rights enjoyed in a democratic society. Because of that very freedom, political controversy is not always conducted in public in polite language. The hustings are no place for sensitive men unused to robust expressions. Honestly held opinions are frequently ridiculed and those who express them are often abused. It must be expected that a politician who indulges in invective may expect that his opponent will respond in a like manner. This is, in my view, the context in which the whole question of fair comment must be considered.

The writer of the published letter was endeavouring to defend the actions of Mr. Jai Ram Reddy whom he had claimed "had been singled out as having insulted Fijian people". He offered explanations. He complained that the plaintiff "portrayed himself as the injured party". He then went on :

> " But let us pause for a moment and go back to the first day of campaigning for this election. It was April 28 I believe, when both the Coalition and the Alliance launched their campaigns in Nausori.
>
> It was in Koroqaqa on the very first day of campaigning that Ratu Sir Kamisese promoting the candidature of Senator Kuar Battan Singh spoke disparagingly of Mr. Sharda Nand as 'atta baba' a contemptous reference to Mr. Nand's involvement in the Flour Mills of Fiji case.

Is that not character assassination of a man who had been proven not guilty by the due process of law. "

The undisputed fact is that the plaintiff made a speech and used the term "atta baba". How he made this reference and in what context was not brought out in evidence. To pose the question thereafter, "Is not that character assassination?" is not a statement of fact but a comment.

Lord Wenslydale in Parmiter v. Coupland (1840) 6 M & W 105 at 108 said :

" Every subject has a right to comment on the acts of public men which concern him as a subject of the realm, if he do not make his commentary a cloak for malice or slander."

At page 728 Gatley the following quotation appears :

"'Every latitude', said Lord Esher, 'must be given to opinion and to prejudice, and then an ordinary set of men with ordinary judgment must say [not whether they agree with it, but] whether any fair man would have made such a comment..... Mere exaggeration, or even gross exaggeration, would not make the comment unfair. However wrong the opinion expressed may be in point of truth, or however prejudiced the writer, it may still be within the prescribed limit. The question which the jury must consider is this - would any fair man, however prejudiced he may be, however exaggerated or obstinate his views, have said that which this criticism has said?' Again, as Bray J. said in R. v. Russell Unreported, December 2, 1905: 'When you come to a question of fair comment you ought to be extremely liberal, and in a matter of this kind - a matter relating to the administration of the licensing laws - you ought to be extremely liberal, because it is a matter on which men's minds are moved, in which people who do know, entertain very, very strong opinions, and if they use strong language every allowance should be made in their favour. They must believe what they say, but the question whether they honestly believe it is a question for you to say. If they do believe it, and they are within anything

> like reasonable bounds, they come within the meaning of fair comment. If comments were made which would appear to you to have been exaggerated, it does not follow that they are not perfectly honest comments.' That is the kind of maxim which you may apply in considering whether that part of this matter which is comment is fair. Could a fair-minded man, holding a strong view, holding perhaps an obstinate view, holding perhaps a prejudiced view - could a fair-minded man have been capable of writing this? - which, you observe, is a totally different question from the question, Do you agree with what he has said? "

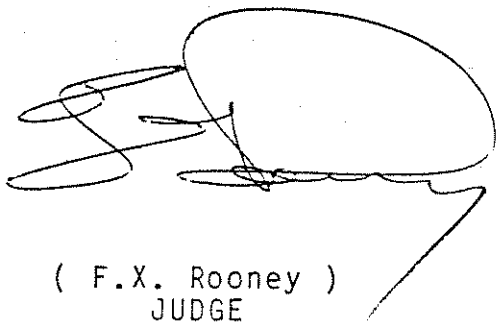
I am of opinion that the language used in the published letter is within the ambit of fair comment and the defence must succeed on this ground. It is therefore unnecessary for me to consider the alternative defence of qualified privilege.

As I have said earlier this action was commenced on the very day on which the published letter appeared in the "Fiji Times". Reference has been made by Lord Diplock in Slim v. Daily Telegraph Ltd. (supra) at 171 to the "artificial and archaic character of the tort of libel". To embark upon an action for libel is a hazardous voyage which should never be commenced without careful preparation. The course must be chartered with care if the reefs and shallows are to be avoided. To launch out with nothing but anger and hope as the guiding stars is to invite shipwreck. The manner in which these proceedings were commenced suggests that the plaintiff was encouraged instead of dissuaded by his legal advisers from taking precipitate action. Gatley says at page 884 :

> "In cases of comment on a matter of public interest the limits of comment are very wide indeed. This is especially so in the case of public men. 'Those who fill public positions must not be too thin-skinned in reference to comments made upon them.' 'One who undertakes to fill a public office offers himself to public attack and criticism; and it is now admitted and recognised that the public

interest requires that a man's public conduct shall be open to the most searching criticism.' Unless there is some clear evidence of malice or some mis-statement of fact, no action should be commenced, however severe the terms of the criticism may be. "

The action is dismissed with costs.



(F.X. Rooney)
JUDGE

Suva,

16th January, 1984