

"Two Navua club members urinating in full view of residents. This photograph was supplied by Mr. Uday Narayan of Navua."

Mr. Narayan is the third named defendant. Above this second photograph is the story below a caption in large block letters as follows :

"CLUB SHOCK
PUBLIC SAYS MEMBERS ACT INDECENTLY

NAVUA residents have called for the closure of a private club in their area following allegations that club members are indecently exposing themselves.

Residents have written to the Commissioner Central asking for the liquor licence at the Navua Club to be cancelled.

They supplied photographs to illustrate their complaints.

Mr. Uday Narayan said yesterday the club supplied liquor to members who got up to 'all sorts of mischief.'

"They urinate in full view of people living beside the club including women and children.

"We got fed up with them and decided to take some photographs and send them to the Commissioner Central."

Mr. Narayan said the club also supplied liquor to non-members.

"Uncontrolled sale of liquor is becoming a problem," he said.

The officer-in-charge of the Navua Police Station, Inspector Aisake Rabuku, confirmed yesterday that a complaint was received about the Navua club this month.

"The report concerned a nuisance inside the Navua club premises," he said.

"Since the alleged action is happening on private premises it is up to the club members to invite the police to intervene."

A spokesman for the Commissioner Central's office said the letter from Mr. Narayan had been received and the matter was under "consideration."

The club's president, Mr. Suchet Singh was not available for comments. "

The first and second named defendants admit publishing the photographs and article. The third named defendant merely admits furnishing the photographs. There is no evidence that he published the article.

The plaintiffs contend that the words and photographs mean and were understood to mean the following :

- (a) The Plaintiffs are guilty of mismanagement of the affairs of the Club.
- (b) The Plaintiffs are irresponsible in the management of the Club.
- (c) The Plaintiffs are incapable of managing the affairs of the Club.
- (d) The Plaintiffs are incompetent in the discharge of their duties as a Committee.
- (e) The Plaintiffs are incapable of maintaining discipline in the Club. "

They contend that "by reason of the premises the plaintiffs have been greatly injured in their credit and reputation as individuals and as a committee".

The defendants deny the photographs and words are capable of any of the meanings alleged by the plaintiffs. They plead justification and give particulars in support of that defence. They also plead fair comment.

Without at this stage considering the defence of justification, I have first to consider whether the alleged defamatory matter was published of and concerning any or all of the 12 plaintiffs. Only the first plaintiff is mentioned by name and his position in the Club and that is only to advise readers that he was not available for comment. The five meanings the plaintiffs allege the photographs and words bear all refer to the plaintiffs in their capacity as the management committee of the Club. If there is any defamatory imputation in the alleged libel it is in my view directed at the Club or its management.

I do not consider that any reasonable person, if he considered the publication bore any meaning other than the plain meaning it bears, would understand it to refer to any one or more of the plaintiffs personally. He would certainly understand it to refer to some irresponsible members of the Club. He would also understand that the Club was accused of supplying liquor to non-members. He could also consider that discipline in the Club must be lax if such things as the paper reported did in fact occur or that the Club was not properly run. However, would any reasonable fair minded person consider that the imputation that the Club was not run properly tended "to lower the plaintiffs in the estimation of right thinking members of society generally" (per Lord Atkin in Sim v. Stretch (1936) 52 T.L.R. at p. 761), or "to cut him off from society or to expose him to hatred contempt or ridicule" (per Parke B. in PanMiter v. Coupland (1840) 6 M. & W. at p. 108).

I consider the answer to the question posed by me is in the negative.

The plaintiffs contend that the photographs have greatly injured them in "their credit and reputation as individuals and as a committee".

So far as the plaintiffs' credit and reputation as individuals are concerned, any right thinking person knowing that any of the plaintiffs was an office bearer of the Club would not blame that person for the irresponsible actions of a member or members of the Club. He would not consider that any person's credit or reputation was damaged or injured by such actions other than those responsible for such actions. Such right thinking person may well have been critical of the Club management but would not in my view single out any plaintiff as being personally responsible.

The first plaintiff himself testified that after the article appeared in the 'Sunday Sun' he met a lot of his friends and relatives who joked with him and said he was not fit to be president.

Another witness for the plaintiffs, Babu Ram Singh, who has been a member of the Navia Club for 2 years, testified he saw the article in the paper and read it. He said it was damaging to the Club and that he spoke to the President,

the first named plaintiff, and told him that if the article was true something had to be done by the Committee.

Another witness was Dhani Ram, a Senior Education Officer and brother of the fifth plaintiff and now a member of the Club. When he saw and read the article he was not a member. He knew some of the Committee members. To the Court he said he did not believe the story and that he checked with the President and Secretary. He was of the opinion that if the story was true it reflected on the Secretary as he had the day to day running of the Club. In answer to Mr. Pillai he said the story reflected on the Club's management.

Another witness for the plaintiff, Mr. Karayan Kurup of Suva testified that he knew 3 or 4 committee members of the Navua Club of which he was not a member. He had read the article and considered that if it was true the Committee was not fit to run the Club.

I am in no doubt that the photographs and article imputed either unbecoming conduct by a member or members of the Club and/or indicated laxity primarily by the Secretary and probably by the Committee responsible for the management of the Club if it is assumed the plaintiffs must have been aware of the situation.

Apart from the first plaintiffs, whose friends joked with him and said he was not fit to be President, the other relevant witnesses reacted the way I would consider the average person would react to the photographs and article - condemn or adversely criticise the Club or the Committee or the Secretary. None of the witnesses who testified said that they considered the article referred to any specific plaintiff for the very reason, I believe, that the article did not refer to any plaintiff and was not capable of exposing any of them personally to "hatred, contempt or ridicule" or to injure any of them "in his office, trade or profession".

Catley in Libel and Slander 7th Edition at paragraph 57 dealing with "Reputation in Business, Trade or Profession" states :

" Reputation in business, trade or profession. Any imputation which may tend to injure a man's reputation in a business, employment, trade, profession, calling or office carried on or held by him is defamatory. To be actionable, words must impute to the plaintiff some quality which would be detrimental, or the absence of some quality which is essential, to the successful carrying on of his office, profession or trade. The mere fact that words tend to injure the plaintiff in the way of his office, profession or trade is insufficient. If they do not involve any reflection upon the personal character, or official, professional or trading reputation of the plaintiff, they are not defamatory."

In my view, nothing in the publication is capable of casting any reflection upon the personal character of any of the plaintiffs or injures his reputation. The words can however reflect on the management committee as such but this does not in my view entitle any member of that committee to take action because he happens to be a member of such committee.

In Knupffer v. London Express Newspaper Ltd. (1944) 1 A.E.R. 495, a case which went to the House of Lords, it was held that when defamatory words are written or spoken of a class of persons it is not open to a member of that class to say the words were spoken of him unless there was something to show that the words about the class refer to him as an individual.

If the members of the Club as a whole were defamed that case would be authority for the proposition that a member of such club, unless identified by the article, has no cause of action.

A committee of the club is a smaller body and in Lord Atkin's and Lord Russell's judgments in Knupffer's case there are references to the fact that members of a firm or body of trustees or directors may be defamed if defamation of the body involves defamation of each member thereof. Lord Atkin referred to the position where the words would reasonably be understood as published of each member of the firm or each trustee. Lord Russell of Killowen said that "the critical question in these cases in which an individual plaintiff sues in respect of defamation of a class or groups of individuals is whether on their true construction the defamatory words were published of and concerning the individual plaintiff".

Lord Porter in the same case said :

"The true question is : was the individual or were the individuals bringing the action personally pointed to by the words complained of?".

I do not consider the words were published of and concerning the plaintiffs or any one or more of them and that being so the plaintiffs must fail.

If I am wrong in my view there is still the defence of justification.

The sting in the article is the allegation that members act indecently by exposing themselves and urinating where the public can see them and the sale of liquor to non-members.

Dealing with the allegation that the Club sold liquor to non-members, I am satisfied from the evidence before me that for some years before the article appeared in the 'Sun' the Club sold liquor to non-members. I accept the evidence of Leone Mataitini, a villager from Lobau 4 miles from Navua. He has never been a member of the Club. He testified that for more than six years he used to go into the Club with his ~~club~~ ^{football} mates every Saturday. He said they used to just walk in and go upstairs and drink. He said if there were a lot of members there they drank downstairs but it was usually upstairs. He said there were no toilets ~~downstairs~~ and they used to relieve themselves outside. He admitted he was the person on the first page of the 'Sunday Sun' urinating from the bottom terrace of the Club premises.

Rankissun, who lives next door to the Club, and whose evidence I accept, also mentioned seeing people on the Club premises urinating.

Nacanieli Lino was another Fijian villager who was not a member of the Club. He confirmed Leone Mataitini's evidence that non-members drank upstairs and would drink downstairs if the Club was full upstairs. He said there was no toilet downstairs and people drinking downstairs would relieve themselves in the open area. Under cross-examination he said that on 23rd June (it would be 1979) he had himself urinated in broad daylight where public could see him. He

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just turned his back on the public and went about his business of urinating.

I find as a fact that the Club had for some time prior to the 24th June, 1979 been selling liquor to non-members who drank on the Club premises. I also find as a fact that people drinking downstairs, in view of the public were seen urinating and in doing so they would have to expose themselves. I have considered, but reject, the evidence of the plaintiffs that because of fences and the area where people were said to urinate it was not possible for the public to see people urinating on the Club premises.

I am satisfied also that there have been complaints about the Club prior to the article appearing in the Sun. It was not established that any of the three persons appearing in the two photographs were members of the Club. One certainly was not a member. The Caption to the article states in large print :

"CLUB SHOCK

PUBLIC SAY MEMBERS ACT INDECENTLY".

Section 15 of the Defamation Act 1971 provides as follows :

"In an action for defamation in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges."

Except that the defendants did not establish that the persons exposing themselves were members of the Club, they did establish, by evidence which I accept, that over a considerable period of time men, both Fijian and Indian urinated on the Club premises downstairs in view of the public. Whether any of these persons were members of the Club only the Club could say. They were clearly invitees of the Club if they were not members.

I hold that, if the photographs and article can be considered defamatory, and the plaintiffs have a cause of action, the defendants' defence of justification succeeds notwithstanding that they have not strictly established that the persons exposing themselves on the Club premises in order to urinate were members of the Club. It is a reasonable inference to be drawn by the public that persons who so act on the Club premises over a period of time and who appear to have a right to be on the premises drinking are members of the Club.

I dismiss the plaintiffs' claim but do not allow the defendants any costs. I do not consider the plaintiffs would have commenced this action at all but for the shame and indignation caused by the two photographs showing men urinating on the Club premises. I consider publication of those photographs discloses very poor taste and little appreciation of what Fiji readers expect to see and read in a newspaper.

(R.G. KERMODE)

J U D G E

SUVA,

October, 1980.

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