

SUPREME COURT

PETER ANTHONY LOMAS

v.

FREDERICK CAINE

[SUPREME COURT, Kermode, J.—8 February, 1980]

Civil Jurisdiction

C *A. Singh with Anil Singh* for Plaintiff
V. Parmanandam for Defendant.

Action for Slander in respect of words spoken at the Tradewinds Convention Centre, Lami. Discussion of meaning of fair comment, plea of justification, aggravation. Onus on defendant. Accusation of racial hatred defamatory.

D *Held:* An accusation of racial hatred was defamatory

Case referred to:

Digby v. Financial News Ltd. (1907) 1 K.B. 509.

E KERMODE, J.

Judgment

F This is an action for slander although the indorsement on the writ of summons states the claim is for damages for libel. The indorsement and the statement of claim make it clear however that the plaintiff complains about words allegedly spoken about him and published by the defendant at the Tradewinds Convention Centre Lami.

It is not in dispute that the plaintiff was at all material times a journalist employed by the *Fiji Sun* newspaper.

G Nor is it disputed that the defendant at a meeting of the Alliance National Council to which members of the public and the press were admitted, spoke and published of the plaintiff the following words:

H ".....Some of the people who write these articles should be sent out of this country. And I've got to mention the man's name and that is this Peter Lomas and a few American Peace Corps who have sowed the seed of hatred in the sport of basketball. And I found out in other sports that this particular author has also caused racial hate in rugby, in football and professional boxing. I was more than insulted of this recent scrap between Mundine and Fossie Schmidt of Samoa. You should have been there to see the reaction. I wasn't there but someone who saw (laughter) came and said 'hey, you Samoan.' (Laughter) You saw how Fossie Schmidt ran out of the scrap to his dressing room. It's the way the article was written accusing the Australian aborigine that he's got a glass jaw. And now there's a division amongst the Samoans in the Western Division. This type of example we must stamp out and get rid of people who do in indirect way create this."

The evidence discloses there was a meeting of the Alliance National Council at the Tradewinds Convention Centre on the 5th August 1978. Amongst others who were present at the meeting were the Prime Minister, Ratu Sir Kamisese Mara, the Deputy Prime Minister, Ratu Sir Penaia Ganilau, the Minister for Labour and Immigration, Ratu David Toganivalu and other ministers and former ministers and prominent supporters of the Alliance Party.

At the time when the defendant addressed the meeting and spoke the words the plaintiff complains about, the subject under discussion was the promotion of racial harmony in Fiji which is without doubt a matter of public interest.

The defendant's defence is that the words were fair comment on a matter of public interest namely the promotion of multi-racial harmony in Fiji and further that the words were true in substance and fact.

In his defence the defendant gave particulars of the facts on which he relied in support of his defence of justification. The particulars are as follows:

Particulars

- (a) That over the period between December, 1977 till August, 1978 the Plaintiff has written a series of articles which have caused concern in that it has tendered to put one racial group up against another and thereby generating a feeling of hatred amongst the groups in question."

There is no doubt that the defendant was referring to the plaintiff when he spoke at the meeting and that the words were spoken of the plaintiff in relation to his profession as a journalist. The plaintiff is specifically named and there is reference to "people who write these articles".

The plaintiff is singled out as one of those people.

The attack on the plaintiff was quite a vicious one. He was accused of sowing "the seed of hatred", which in the context of the words and the subject under discussion can only mean sowing the seed of racial hatred and that he had caused hatred in sporting circles.

I hold as a fact that the words are defamatory of the plaintiff and calculated to injure the plaintiff in his profession as a journalist or employment as a journalist by the *Fiji Sun*.

The plaintiff is entitled to damages unless the defendant can succeed on his defences of fair comment and justification.

Subject to section 16 of the Defamation Act 1971 the defence of fair comment must be based on facts truly stated. The comment must not contain imputations of corrupt or dishonourable motives on the person whose conduct or work is criticised save in so far as such imputations are warranted by the facts. The comment must also be the honest expression of the persons making the comment.

Section 16 of the Defamation Act 1971 has not altered the law that fair comment is a defence to comment only. The effect of the section is that the defendant will not fail in his defence of fair comment if he is unable to prove the truth of every allegation of fact if the expression of opinion is fair comment having regard to such of the facts as are proved. Where there is any defamatory meaning in any of the facts on which comment is based a defendant must plead and prove a justification.

So far as a plea of justification is concerned as Collins M.R. said in *Digby v. Financial News Ltd.* (1907) 1 K. B. at p. 509 "a plea of justification means that all the words are true and covers not only the bare statements of facts in the alleged libel but also any imputations which the words in their context may be taken to convey."

In pleas of both fair comment and justification the burden of establishing the defence is on the defendant.

B The facts stated by the defendant in the words he used are the following:

1. The plaintiff had sowed the seed of hatred in the sport of basketball.
2. He had caused racial hate in rugby, football and professional boxing.

These alleged facts were alleged to be the result of articles the plaintiff was alleged to have written. If the defendant establishes that these facts are true his comment on them, if fair, would be fair comment on a matter of public interest and he would succeed on his defence of fair comment and justification.

C

The defendant gave evidence and sought to establish his defences. He made no effort to produce any article written by the plaintiff but sought to give evidence about trouble which had erupted after articles had been published in the *Fiji Sun*. There was no evidence that the plaintiff had written those articles. No doubt the defendant expected to establish his defences through cross-examination of the plaintiff and his witnesses.

D

In view of the admissions made in the Defence the plaintiff in the discretion of the Court was allowed to reserve his answer to the plea of justification. He gave no evidence, relying on the admissions, and did not find it necessary to give evidence in rebuttal of the defendant's evidence.

I am satisfied that the matter being discussed at the Alliance National Council meeting was a matter of public interest but the defendant has failed to establish his defences of fair comment and justification. Not only has he failed to prove the truth of the facts he stated in his address to the Council he has not even sought to establish that the plaintiff wrote any articles which could have caused racial hatred. What was required was production of the alleged articles which would have enabled the Court to determine whether they were capable of creating racial hatred.

E

It is not sufficient for the defendant to express his views on articles published in the *Sun* which may or may not have been written by the plaintiff and relate that there was a fight between two sporting teams at a night club and that a *Fiji Sun* report was involved and that a *Sun* reporter named Maika had been assaulted and died as a result. Nor does evidence that the plaintiff was in danger of being assaulted at an interdistrict basketball tournament at Easter 1978 assist the defendant. He pleaded but did not attempt to prove that the plaintiff had written a series of articles that tended to create racial trouble between groups of people.

G

The plaintiff succeeds in his claim and is entitled to damages and the question is what is the measure of the damages.

The defendant's comments were a vicious unjustified slander of the plaintiff in his profession as a journalist. The plaintiff is the sports editor of the *Sun* and an expatriate and the remarks were made in the presence of the Minister responsible for Immigration who would be concerned whether the plaintiff could remain in Fiji. The defendant advocated that persons who wrote in the manner the plaintiff was alleged to have written should be sent out of the country.

H

The defendant is a Member of Parliament and his utterances would carry more weight with people whom he addressed than the words of some nonentity. In the main the persons the defendant addressed his remarks to were prominent members of Parliament before whom no doubt he had been in the habit in the past of speaking in Parliament. It appears to me that the defendant forgot he was not in Parliament at the time he made the comments where he could with impunity make statements of the nature he made without fear of court action. He chose to make the remarks in public outside Parliament and this action has been the result.

A

He was ill advised to seek to justify the defamatory remarks and has maintained that attitude even at the hearing of this action. He has thereby aggravated the damage done to the plaintiff's reputation as a journalist.

B

This is an action for slander. The words spoken of the plaintiff were not spoken in sudden anger but deliberately in a speech before an influential body of people. There was not a large number of people present at the time—the approximate number was between 30 and 50 persons. Had I been dealing with a libel which is of a permanent form and if published in a newspaper would be widely disseminated the injury done to the plaintiff could have been more substantial.

C

The publication was to a small body of people of influence. While the printed record of the spoken words does not convey the manner in which the words were spoken they no doubt conveyed to those who heard them that they were the comments of a politician who was overborne by personal feelings to such an extent as to make some of his comments barely intelligible. I confess I am quite unable to follow the remarks of the defendant in reference to the Mundine Fossie Schmidt boxing fight and how those remarks bolstered his statement that the plaintiff by his articles created racial hatred in sport. Nevertheless the offending remarks referring to the plaintiff were explicit.

D

Damages awarded in libel actions are of little assistance when it comes to considering damages for slander. The written word can cause more injury than the spoken word and in some quarters it is believed that the spoken word can cause little injury. That is not the view of the law which in cases such as the instant one presumes general damages flow from such a slander.

E

In a multi racial society like Fiji harmonious relations between races is essential to good government. Government has legislated to ensure that good relations shall be maintained. Section 17(1)(a)(i) of the Public Order Ordinance 1969 makes it an offence to incite racial dislike or hatred by means of words spoken or intended to be read. The defendant's words went further than stating the plaintiff was inciting racial hatred, he stated as a fact that the plaintiff by his articles had caused racial hatred.

F

While this is not a libel action the defamatory statements were of a serious nature and calls for an award of substantial damages.

G

I assess the damages at \$1,000. The defendant is to pay the costs of this action.

Judgment for the Plaintiff.