ment. He lay by until after his goods had been sold, and subsequently brought his action. The respondent seems to me to be obviously of that class which the Legislature intended, and justly intended, should be protected by having notice of action, and by the action being brought within a limited time after the matter complained of. The appeal is dismissed.

Costs were allowed, £7 7s.

Appeal dismissed.

Solicitor for the appellant: *J. J. Paterson* (Dannevirke).

Solicitor for the respondent: *H. A. Cornford* (Napier).

CAMPBELL AND ANOTHER *v.* PAYTON.

Defamation—Libel—Defamatory Words—Charges of "Vexatious Litigation" and "Unbrotherly Conduct."

The defendant, in his newspaper, misreported a District Court Judge as having stated that a certain action brought by the plaintiffs against a brother of one of them ought never to have come before the Court, and that an offer of settlement made by the brother ought to have been accepted by the plaintiffs. The innuendo charged that the words used meant that the plaintiffs were improperly and vexatiously prosecuting their action, and unconscionably trying to extort more than they were in justice entitled to. The jury found that the words bore the meaning attributed to them, and that they were libellous.

Held, That the words were capable of a defamatory sense, and that the verdict of the jury must stand.

It is libellous to say of any one that his conduct towards his brother has been unbrotherly.

THIS was a motion for a nonsuit pursuant to leave reserved at the trial. The action was one for libel. The plaintiffs were John Campbell, of Opaki, farmer, and Mary Jane Campbell, his wife, and the defendant was the proprietor and publisher of the *Wairarapa Daily Times*, published at Masterton. The plaintiffs were farmers, and in the month of March, 1897, they brought an action against Hugh Campbell, a brother of the plaintiff John Campbell, and a neighbour of theirs, in the District Court at Masterton, in which they

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sought to recover damages which they alleged they had sustained by reason of a fire lit by Hugh Campbell spreading on to their property. This action was tried at Masterton before District Judge Kettle and a jury, and on the 29th of March the jury gave a verdict for the defendant. On the 25th of June, 1897, a motion for a new trial was heard, and on the 28th of June the District Judge delivered a written judgment granting a new trial. After some points in connection with the order had been discussed with counsel, the Judge made some observations in reference to the propriety of the case being settled, which were reported in the *Wairarapa Daily Times* in the following terms: "Before leaving the bench "his Honour said that he had stated that this case should "never have come before the Court. An offer of settle- "ment had been made by the defendant which should "have been accepted by the plaintiff. He still had very "strong feelings that the parties should come to some settle- "ment without again bringing the case before the Court. "The proposals for a settlement should have been adopted "that were originally made." The statement of claim in the present action denied that these words were used by the District Judge, and alleged that this portion of the report—which was the libel complained of—was wholly untrue, and was falsely and maliciously published by the present defendant, and was calculated to prejudice the plaintiffs on the new trial of their action. The statement of claim alleged that the meaning of the words complained of was "that the plaintiffs "were improperly and vexatiously prosecuting their action "against the said Hugh Campbell, and unconscionably try- "ing to extort by means of such action more than they "were in justice entitled to." Correspondence took place between the solicitor for the plaintiffs and the defendant in reference to the report, and finally the defendant agreed to make a satisfactory retractation if the District Judge, on being referred to, should say that the report was not a fair one. On the District Judge being applied to, the Clerk to the District Court replied by his direction that the report was in some respects inaccurate, that the

Judge had simply expressed a hope that, as the parties were brothers and neighbours, they would endeavour to settle their disputes out of Court, and that he had not said that "an offer of settlement had been made by the defendant "which should have been accepted by the plaintiff," nor that "the proposals for a settlement should have been adopted "that were originally made." A paragraph was inserted by the present defendant in his newspaper in reference to this reply of the Judge, which was not, however, considered by the plaintiffs to amount to a satisfactory retractation, and, the defendant declining to do any more, this action was brought. The case was tried at Wellington before Edwards, J., and a special jury of twelve, on the 29th of September, 1897. The jury found (1) that the defendant was not in fact actuated by malice, (2) that the words complained of bore the meaning alleged in the statement of claim, (3) that they were libellous, (4) that the plaintiffs had agreed to accept a sufficient retractation, (5) that the defendant had not published a sufficient retractation; and they awarded the plaintiffs £20 damages. After the verdict was taken the case was reserved for further consideration, certain nonsuit points being specially reserved. The only point argued, however, was the question whether the words used were capable of a defamatory meaning. The point was, on the suggestion of Edwards, J., argued before himself and the Chief Justice.

Gully, for the defendant:—

The innuendo alleged is that the plaintiffs were vexatiously prosecuting their action. The words used, however, admit that the plaintiffs had a claim, but say that it ought to have been settled out of Court. The words are not capable of a defamatory meaning. No imputation of bad character to the plaintiffs can be got out of them.

[PRENDERGAST, C.J.—May they not mean that the plaintiff was acting in an unbrotherly manner? Is there not a case which says that to call a man ungrateful is libellous—the "frozen snake" case?]

There is no suggestion of any impropriety. In any case, it

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is a reflection on both parties that there was no settlement: *Cox* v. *Cooper*(1); *Reg.* v. *Coghlan*(2); *M'Cann* v. *The Edinburgh Roperie Company*(3). In *Fray* v. *Fray*(4) there was an accusation of improper litigation with the object of putting the defendant to all possible expense.

Sir R. Stout, for the plaintiffs:—

The Court cannot disturb the finding of the jury in this case. There was clearly a charge of harassing litigation against a brother. The words are capable of the meaning set up: *Fray* v. *Fray*(4); *Blundell* v. *Gardiner*(5); *Gallagher* v. *Murton*(6); *Nevill* v. *The Fine Arts and General Insurance Company*(7).

[Counsel was here stopped by the Court.]

PRENDERGAST, C.J.:—

I think the words are capable of a defamatory sense. It is not necessary to say that the sense which the statement of claim put on them, and which the jury have found, is the sense which this Court would put on them. All we have to decide is the abstract question whether the words are capable of a defamatory sense. I agree with the Judge who heard the case that the case was a proper one to go to the jury. It seems to me that to call a brother unbrotherly is defamatory. The judgment as reported might well have meant that it was not creditable for one brother to bring such an action against another. But it was capable of more, and the jury thought that it meant that the action was, under the circumstances, vexatious.

EDWARDS, J.:—

I am of the same opinion.

Judgment for the plaintiffs.

Solicitor for the plaintiffs: *A. R. Bunny* (Masterton).

Solicitor for the defendant: *W. G. Beard* (Masterton).

(1) 12 W.R. 75.
(2) 4 F. & F. 316.
(3) L.R. (Ir.) 28 Q.B. 24.
(4) 34 L.J. C.P. 45; 17 C.B. N.S. 603.
(5) 4 N.Z. Jur. N.S. S.C. 70.
(6) 4 T. L.R. 304.
(7) [1895] 2 Q.B. 156.