as to entitle them to the qualified privilege of persons acting in good faith and making communications with a fair and reasonable purpose of protecting their own interest. [See the Judgment of Maule, J., in *Somerville* v. *Hawkins* (1).]

The law regards statements of certain kinds as libels *primâ facie*. If made maliciously in the common understanding of the term, they render all makers of them liable to compensate, unless they stand in a position in which considerations of public policy overcome the private right. Even those who make them in good faith, but wrongfully, will be liable, unless entitled to the more qualified privilege of which the present case is an example. If entitled to such qualified privilege they will not be bound to pay compensation, even if the statements are erroneous, because guilty of no injury, unless they have used the occasion not for the fair protection of interests of their own or for the satisfaction of duties moral or legal, but for the gratification of private ill-will. In this case it is clear that the defendants are not liable.

Appeal allowed.

INSOLVENCY JURISDICTION.

Before Mr. Justice Innes.

1877.
November 19.

IN THE MATTER OF THE PETITION AND SCHEDULE OF VARDALACA CHARRI, a discharged Insolvent Debtor.

Insolvent Act—11 & 12 *Vict., c. XXI, s.* 40—*cestui que trust creditor.*

As the Indian Insolvent Act, by virtue of the terms of Section 40, incorporates all existing and future enactments passed in England for the purpose of determining what debts may be proved; and as by Section 15 of the English Act of 1869, property held by the bankrupt in trust for others is not the property of the bankrupt divisible among his creditors; such property cannot be regarded as having vested in the Official Assignee and a *cestui que trust* creditor is not entitled to come in and prove; because what is being administered in insolvency is the insolvent's estate, of which property of this nature does not form part.

Mr. *Johnstone* for Vencataramánagiri Gosáyi, claiming as a creditor.

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(1) 20 L. J.C.P. 131: 10 C.B. 583.

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IN RE VARDALACA CHARRI.

Mr. *Miller* for Benjamin Brooks, Esquire, the Official Assignee and, as such, the assignee of the above insolvent's estate.

The facts fully appear in the following judgment of

INNES, J.:—Mr. Johnstone moved on behalf of Venkatarámánagiri Gosáyi to be allowed a primary charge on certain funds in the hands of the Official Assignee, which he holds as assets of the insolvent, T. Vardalakacharri. Venkatarámánagiri Gosáyi comes here as the legal representative of one Devagiri, who was the legal representative of one Predinagiri. In appeal suit 9 of 1843 the Sadr Court gave Predinagiri a decree for Rupees 22,767-12-0. On the 12th October 1846 this decree was assigned by the holder to Judenagiri, to whom Predinagiri owed a debt of Rupees 1,751, on the understanding that he was to realize the decree amount, pay himself, and make over the balance to Predinagiri. Proceedings were taken by Judenagiri. Predinagiri died in 1849 and Judenagiri in November 1854. The father of the latter (Jannagiri) revived the suit and resumed proceedings in execution, and ultimately, during his absence at Sattara, a sum of Rupees 18,138-15-2 was recovered through the agency of his gumasta Petamba Ráu. Under the agreement of 1846 a large portion of this was payable to Devagiri, legal representative of Predinagiri, and on the 13th September 1855, Devagiri being indebted to Vardalakacharri, entered into an agreement with him in writing, and gave him a power of attorney to recover the amount on his (Devagiri's) behalf, and after paying himself the debt owing to him, and certain other debts due to other persons, viz., 11,000 and odd to Shop Venkatarangum Setti and 1,500 Rupees to others, to pay over the balance to Devagiri.

Vardalakacharri executed in favor of Devagiri a counter agreement, and gave Shop Vencatarangum a bond for the amount due to him. Vardalakacharri accordingly instituted a suit in 1859, in the late Supreme Court, against Jannagiri and Petamba Ráu for an account.

In 1864, while the suit was still pending in the Master's Office, Vardalakacharri became insolvent.

The Official Assignee revived the suit in 1865, and on the 11th July 1866, on the report of the Master, dated 4th May 1866, the

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High Court gave a decree to the effect that the Official Assignee, as assignee of Vardalakacharri's estate, was entitled to all the rights of Devagiri under the decree of the Court of Sadr Adálat.

The Official Assignee, it is said, recovered Rupees 28,000 under the decree of the High Court, out of which Shop Venkatarangum's legal representative Appávu, under a decree in a suit, No. 128 of 1870, which he instituted against the Official Assignee, recovered Rupees 22,000. A balance to the amount of Rupees 6,000 or 7,000 is said by the applicant to be in the hands of the Official Assignee. There were other persons besides Venkatarangum whom Vardalakacharri undertook, under the agreement of 1855, to pay what was owing to them; and the applicant prays that he may be allowed a primary charge on the sum in the hands of the Official Assignee for the balance owing to him. The motion was opposed by Mr. Miller, who represents that the Official Assignee has no funds to the credit of Devagiri Gosáyi; that the applicant is not down in the schedule as a creditor; and that he has already instituted two suits, 691 of 1870 and 670 of 1871, with the same object; that each suit was withdrawn with leave to bring a fresh suit, and that the leave granted on the withdrawal of the second suit to bring a fresh suit was made conditional on payment of costs of first and second suits, and that they could not yet have been paid.

The amount sought to be recovered either forms part of the insolvent estate in the hands of the Official Assignee, or it has, by an error, been taken over and amalgamated with the assets of the Insolvent. It is alleged to be, and in accordance with the case of *ex-parte Smith* (1) and a later case, *ex-parte Smith, Payne and Smith* in the matter of Wm. Manning and others (2), would appear to be trust estate, which ought not to be held by the Official Assignee as assets of the bankrupt.

The Indian Insolvent Act, by virtue of the terms of Section 40, incorporates all existing and future enactments passed in England for the purpose of determining what debts may be proved; and by Section 15 of the English Act of 1869, property held by the bankrupt in trust for others is not the property

(1) Buck, 355: 2 Rose, 457. (2) 4 Deac. and Ch., 579.

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IN RE VARDAIACA CHARRI.

of the bankrupt divisible among his creditors: such property cannot be regarded as having vested in the Official Assignee, and a *cestui que trust* creditor is not then in my opinion entitled to come in and prove, because what is being administered in insolvency is the insolvent's estate, of which property of this nature does not form part. But assuming that the applicant would be entitled to come in and prove, I cannot find any provision in the Indian Act which admits of his proving otherwise than rateably on a par with the other general creditors of the insolvent. But that is not what is now sought. The proper course, probably, when the assignee does not feel warranted in at once admitting a claim of this nature, and paying it over, is that which was taken on two previous occasions, viz., to bring a suit, a course which is apparently only not taken now because it would entail payment of the costs of the suits withdrawn.

Without, therefore, taking upon me to pronounce upon any of the facts alleged, it appears to me that the fund on which a charge is sought to be declared, being (if it exists) by the applicant's own showing not part of the estate of the Insolvent, cannot be adjudicated upon by this Court sitting as an Insolvent Court.

The motion must be dismissed with costs.

Motion dismissed.