APPELLATE CIVIL.

Before Sir Walter Morgan, Kt. Chief Justice and Mr. Justice Holloway.

HINDE AND 3 OTHERS, APPELLANTS (DEFENDANTS) *v.* BAUDRY AND 2 OTHERS, RESPONDENTS (PLAINTIFFS).* 1876. *November* 27.

Libel—Debtor—Qualified Privilege.

Plaintiffs and defendants were the members of two firms, each creditors of an absconded debtor one Bávachi Kunhi Pakhi. The plaintiffs' firm brought a suit to recover the sum alleged to be due to them by the said Bávachi Kunhi Pakhi and pending that suit the defendants' firm presented a petition to the Court which contained the statements complained of, which were principally to the effect that the plaintiffs had prejudiced the petitioners by suing the said Bávachi Kunhi Pakhi for sums greatly in excess of their just claims against him. The Judge found that there was no malice in fact, but that the statements were untrue and calculated to damage, and he, accordingly, gave a decree to the plaintiffs with damages.

Held, on appeal, reversing the decision of the Lower Court, that as the defendants were creditors of an absconded debtor and deeply interested in seeing that his estate was not swept off in satisfaction of an excessive claim made by the earliest suitor, they, in presenting a petition pointing out what they considered suspicious elements in the plaintiffs' claim against such debtor, were at all events entitled to the qualified privilege of persons acting in good faith and making communications with a fair and reasonable purpose of protecting their own interest.

THIS was an action for damages for libel. The circumstances out of which it arose were as follows:—Plaintiffs and defendants were the members of two firms, each creditors of an absconded debtor one Bávachi Kunhi Pakhi. The plaintiffs' firm brought a suit to recover the sum alleged to be due to them by the said Bávachi Kunhi Pakhi, and pending that suit the defendants' firm presented a petition to the Court which contained the statements complained of, which were principally to the effect that the plaintiffs had prejudiced the petitioners by suing the said Bávachi Kunhi Pakhi for sums greatly in excess of their just claims against him. The Judge found that there was no malice in fact, but that the statements were untrue and calculated to damage, and he accordingly gave a decree to the plaintiffs with damages.

The defendants appealed to the High Court.

* Regular Appeal No. 75 of 1876, against the decree of V. P. D'Rozario, Subordinate Judge of North Malabar, dated 30th March 1876.

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Mr. *Shephard* for the Appellants contended that they were justified in presenting the petition to the Court, and seeing how deeply interested they were in the matter, they had at all events a minor privilege. [HOLLOWAY, J. (having referred to 4 Rep. 14; 4 Rep. 14 b. 2nd resolution, which he remarked was doubted by many eminent lawyers)—Your difficulty is that you are neither a witness nor a party]. *Seaman* v. *Netherclift* (1).

There was no appearance for the Respondents.

The Court (Sir W. MORGAN, C. J. and HOLLOWAY, J.) delivered the following

JUDGMENT.—In this case damages have been awarded for defamation. The defamatory matter was contained in a petition addressed to the Sub-Court in the course of an action by the plaintiffs to recover money on bills against the estate of a runaway Moplah.

The Sub-Judge finds that there was no evil intent, by which he no doubt means malice in fact; but because the statements are untrue and calculated to damage, he has decreed for the plaintiffs.

The defendants were creditors of the defendant in the suit, and were deeply interested in seeing that the estate of the runaway was not swept off in satisfaction of the claim in an investigation likely, from the position of the case, to be somewhat perfunctory. They presented a petition pointing out what they considered suspicious elements in the plaintiffs' claim. The Court in a country like this was also deeply interested that its process should not be misused to the damage of the other creditors.

The great latitude of intervention allowed by our procedure, and the provisions by which the earliest suitor is allowed to take the whole fund, render it perhaps difficult to say that these petitioners were mere strangers to the suit. If they were rightfully making an application in the suit, the principle of public policy which guards the statement of a party or witness against an action would protect them whether the statement was malicious or not. This principle has prevailed in England from the earliest times. *Cutler* v. *Dixon* (2) is an early, and *Seaman* v. *Netherclift* (1) is a very late illustration. If, however, it must be held that they were not in a position which would afford absolute protection, it seems clear that they are so placed

(1) L.R. 1 C.P. Div. 540.

(2) 3 Rep. 14.

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.