competent to Ramayyan to bind himself by contract to make the will which he did make. For these reasons I am of opinion that if it can be shown that the adoption was made on an understanding between the parties that the defendant should take his place in the family subject to the arrangement made by his adoptive father in favor of the plaintiff, the plaintiff ought to succeed in this suit.

[The District Judge recorded a finding in the affirmative on the issue framed by the High Court; and when the case came on for re-hearing and the Court passed a decree setting aside the decree of the District Judge and restoring that of the Subordinate Judge.]

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Muttusami Ayyar.

1889. March 1. April 29.

VALLABHA (DEFENDANT No. 1), APPELLANT,

v.

MADUSUDANAN (PLAINTIFF), RESPONDENT.*

Defamation—Illegal declaration that one is out-casted—Observations on the use of books of history to prove local custom, and on the position as heads of their caste of the representatives of the ancient sovereigns of the West Coast.

According to the usage of certain Nambudris, a caste enquiry is held when a Nambudri woman is suspected of adultery, and if she is found guilty, she and her paramour are put out of caste.

An enquiry was held into the conduct of a certain woman so suspected; she confessed that the plaintiff had had illicit intercourse with her and thereupon they were both declared outcastes, the plaintiff not having been charged nor having had an opportunity to cross-examine the woman or to enter on his defence and otherwise to vindicate his character. In a suit for damages for defamation by the plaintiff against those who had declared him an outcaste:

Held, the declaration that the plaintiff was an outcaste was illegal, and it having been found that the defendants had not acted *bonâ fide* in making that declaration, the plaintiff was entitled to recover damages.

Observations on (1) the use of books of history to prove local custom, and (2) on the position as heads of their caste of the representatives of the ancient sovereigns of the West Coast.

SECOND APPEAL against the decree of the District Judge of South Malabar, in appeal suit No. 613 of 1887, confirming the

---

* Second Appeal No. 151 of 1888.

VALLABHA v. MADUSUDANAN.

decree of the District Munsif of Angadipuram, in original suit No. 479 of 1886.

Suit by a Nambudri Brahman who alleged that the defendants had defamed him by declaring him an outcaste, to recover Rs. 140 as damages. It was stated in the plaint that defendant No. 1 and the plaintiff were on bad terms, that defendant No. 1 gained over to his side defendant No. 3, and his mother, who had been long leading a life of adultery and caused them to say that plaintiff was guilty of illicit intercourse with her; that the defendants subsequently made a show of holding a caste enquiry and declared the mother of the third defendant an outcaste and maliciously published that the plaintiff was unfit to enter temples, to get his meals in choultries, and to enter the houses of Nambudri Brahmans; and that the caste enquiry was held contrary to custom and the shastras.

Defendant No. 1, who is the Rajah of Walawanad, denied the allegations in the plaint and stated that the suit being one concerning religious questions was not maintainable, that it was at the request of defendant No. 3 and agreeably to usage that he directed a caste enquiry into the charge of adultery against the plaintiff with the mother of defendant No. 3, that at the enquiry the plaintiff was declared guilty of adultery, that he consequently interdicted the plaintiff from entering temples, that this act was within the scope of his authority and was done *bonâ fide*, and that the suit ought, therefore, to be dismissed.

Defendant No. 2 denied the allegations in the plaint and stated that he took part in the enquiry into the charge of adultery against the mother of defendant No. 3 under the direction of defendant No. 1 who is the Rajah of the country, that this was according to usage, that the enquiry was held in accordance with the custom of the country and the shastras, that in the enquiry so held the plaintiff was found to have committed adultery with the mother of defendant No. 3, and that there were others who took part in the enquiry like himself and that he was not liable to pay damages to the plaintiff.

Defendant No. 3 denied the allegations in the plaint and stated that the suit was not maintainable, that plaintiff was outcasted after an enquiry held in accordance with the rules and customs followed by Malabar Brahmans and that plaintiff was therefore not entitled to recover damages.

Sankaran Nayar for appellant.

Narayana Rau for respondent.

The further facts of this case and the arguments adduced on this second appeal appear sufficiently for the purpose of this report from the judgment of the Court (Collins, C.J., and Muttusami Ayyar, J.).

JUDGMENT.—The appellant is the Rajah, and the respondent is a Nambudri Brahman of Walawanad in South Malabar. The latter sued the former and two others for defamation of character and obtained a decree for Rs. 140 as damages. On appeal the award was upheld by the District Judge. Hence this second appeal.

The facts of the case are shortly these:—In April 1884 a Nambudri woman, named Itticheri, preferred a complaint against the respondent to the Tahsildar-Magistrate of Walawanad, stating that the respondent had three years before "reduced her to a position of infamy and promised to get her redeemed from the infamy or to maintain her," and that when she insisted on his fulfilling the promise, he pushed her down and threatened to cut her with a chopper. The Magistrate dismissed the complaint under section 203 of the Code of Criminal Procedure on the ground that whatever the respondent did was on her own showing done in self-defence. It appears that according to the usage obtaining among Brahmans of this class on the West Coast, a caste enquiry is held whenever a Nambudri woman is suspected of adultery, and that if she is found guilty, she and her paramour are put out of caste. According to the evidence in this case when a woman is suspected, her kinsmen and their family priest examine her maid servant and ascertain if there is ground for a fuller enquiry. This preliminary investigation is termed dasi vicharom and it is initiated by her kinsmen and their family priest. On its being ascertained that further enquiry is necessary, a report is made by them to that effect to the Rajah, recognised as the protector of the caste usage, and the woman is meanwhile asked to reside in a detached part of the house called the "anjampura." On the Rajah approving of the report, he appoints a Smarthan (a Brahman acquainted with Smriti), four Mimamsakars (men versed in sifting evidence) and two others called Akomkoima and Puramkoima to aid in the investigation. The investigation is then conducted at the time and place

VALLABHA v. MADUSUDANAN.

appointed, and if the woman is found guilty, the woman and her paramour are pronounced to be outcastes. In Tulam 1060 (October-November 1884) defendant No. 3, Itticheri's son, and his kinsmen and the family priest examined her maid servant, and made a report to defendant No. 1, appellant, the titular Rajah of Walawanad, that further enquiry was necessary. The appellant then appointed defendant No. 2, the hereditary Smarthan in that part of the country, four Mimamsakars (assessors) and two others to conduct the regular investigation. It would seem that on the third day of the enquiry, Itticheri confessed that the respondent had illicit intimacy with her. Relying on her statement and without charging the respondent or giving him an opportunity to cross-examine the woman or enter on his defence and otherwise vindicate his character, the Smarthan and the others pronounced the swarupam or the declaration that Itticheri and the respondent were out of the caste. It is in evidence that the regular enquiry terminated before Kumbom 1060 (February-March 1885). In March 1885 the respondent attempted to enter the Edathpurath temple under the supervision of the appellant and that the officiating priest in charge of the institution objected to his doing so on the ground that he was an outcaste. Thereupon the respondent brought this suit. His case was that he was innocent, that the appellant bore personal ill-will to him and acting in collusion with defendants Nos. 2 and 3, got Itticheri to accuse him of criminal intimacy with her, that the enquiry was not held in accordance with the custom of the caste, and that the declaration that he was an outcaste was false and malicious. The District Munsif considered that the malice attributed to the appellant had no foundation, and that the enquiry conducted in this case was in accordance with caste usage, but he observed that the respondent had no opportunity given to prove his innocence or to cross-examine Itticheri, and that though the procedure followed was in accordance with the practice hitherto followed at caste enquiries, it was at variance with the well-known principle that no one should be condemned without being heard and that it was open to abuse. On that ground he decreed the claim against the appellant and others. It was contended *inter alia* in appeal that the defendants acted *bonâ fide*. The Judge declined to accept the contention on three grounds, viz., (1) that the respondent had no notice of the charge and no opportunity of vindicating his character

or proving his innocence, (2) that if the caste custom was followed in its integrity, defendant No. 3 and his relatives should have represented the matter to the Collector as the local representative of the Queen-Empress and have awaited the orders of the Government, (3) and that the appellant omitted to make any enquiry before appointing defendant No. 2 to hold the regular investigation and that his conduct was therefore not *bonâ fide.* It is argued before us that none of these grounds can be supported in law.

It was certainly a serious defect in the investigation that the respondent was not heard before he was condemned upon the uncorroborated statement of Itticheri, who had publicly avowed her intimacy with him even before her kinsmen thought of complaining against her conduct and the declaration that the respondent was an outcaste was clearly bad in law. No imputation ought to be made in a reckless or inconsiderate manner. Nor can it be said that when means of obtaining accurate information is available and when it is discarded and no earnest effort is made to arrive at the truth, the belief in which the imputation was made was formed with due care and caution, or *bonâ fide.* No enquiry can be treated as fair when a person deprived of his *status* in his caste is not heard before he is condemned. On the question of *bona fides*, however, the Judge is in error in observing that defendant No. 3 and his kinsmen ought to have reported to the Collector their suspicion against Itticheri and awaited the orders of the Government. Though the appellant is only a titular Rajah and not a sovereign prince, yet he may be the recognised head or hereditary patron of the caste who as such may be entitled by usage to take part in an enquiry like the one before us, especially as non-interference in matters of caste or religion is a recognised principle of the British rule. The Judge has apparently overlooked the fact that what was formerly done by the appellant's ancestors as sovereign princes, who were both rulers and heads of the caste, might still be lawfully done by the appellant by the usage of the caste, and the avowed policy of the British Government. Further the Judge refers to the appellant's omission to hold an enquiry before appointing defendant No. 2 and others to conduct the regular investigation and relies on Sangunni Menon's History of Travancore, p. 77. This book is not one of the exhibits in this case. Neither the

VALLABHA v. MADU-SUDANAN.

witnesses for the appellant nor those for the respondent are alleged to refer to such duty. Nor have they been examined in regard to it. We do not consider that it was regular to rely upon the book without first calling the attention of the parties to it and hearing them as to whether the procedure prescribed therein is an incident of the usage as it obtains in the Walawanad taluk. Notwithstanding these errors of procedure to which we call attention in view to prevent their recurrence, we are of opinion that the decision of the Judge must be supported on the ground already mentioned. We dismiss this second appeal with costs.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Wilkinson.

1889. April 12, 13.

RAMIREDDI (DEFENDANT), APPELLANT,

v.

SUBBAREDDI (PLAINTIFF), RESPONDENT.*

Civil Procedure Code, s. 13—Res judicata—*Previous suit dismissed as premature.*

A suit by the assignee of a mortgage bond against the mortgagor was dismissed on the ground that the plaintiff was not entitled to sue for want of notice to the defendant under s. 132 of the Transfer of Property Act. The plaintiff then gave express notice of the assignment to the mortgagor and sued on the bond again:

Held, the claim was not *res judicata* and the second suit was accordingly not precluded by s. 13 of the Code of Civil Procedure.

SECOND APPEAL against the decree of L. A. Campbell, District Judge of Nellore, in appeal suit No. 188 of 1887, confirming the decree of T. Ramachandra Rau, District Munsif of Nellore, in original suit No. 132 of 1886.

The plaintiff sued as assignee of a mortgage bond executed to his assignor by the defendant. He had sued on it before in original suit No. 1102 of 1885 on the file of the District Munsif's Court, but the defendant then pleaded that he had not notice of the transfer, and the District Munsif holding this plea to be valid, dismissed the suit. In the present suit the defendant pleaded that the claim was *res judicata*. The District Munsif, and on appeal the District Judge, held that the claim was not *res*

* Second Appeal No. 1121 of 1888.