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hereditary right, if any, thereby ceased. He fails further to notice that the constitution of three trustees as a managing body was incompatible with the alleged existence of a competent hereditary trustee in 1842. He fails also to notice the conduct of the family from 1834 to 1880 which discloses no trace of hereditary trusteeship, while there is positive evidence showing that the Collector nominated trustees once in 1805, again in 1837, and again in 1863, besides constituting three trustees in 1842. He does not also attach weight to the fact that the temple owed all its endowments to the Government, and that there is not a single public document which contains a recognition of hereditary trusteeship, and that the Collector's interference in nomination is referable to a legal origin.

We set aside the decree of the Subordinate Judge, declare that the temple in dispute is of the class mentioned in section 3 of Act XX of 1863, and is as such subject to the jurisdiction of the appellants, and direct that the appellants' claim to other reliefs be disallowed, and that the appeal be allowed to the extent indicated above with costs throughout to be paid out of the respondents' estate.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

1889. Apl. 17, 25.

VENKATA NARASIMHA (PLAINTIFF), APPELLANT,

v.

KOTAYYA AND OTHERS (DEFENDANTS NOS. 2 TO 5), RESPONDENTS.*

Defamation—Privilege—Petition to Revenue officer—Presumptions as to malice.

Certain raiyats in a zamindari village addressed a petition to the Tahsildar praying that the Village Munsif might be retained in office notwithstanding the Zamindar's application for his removal. The petition imputed criminal acts to the Zamindar, who now sued the petitioners for damages on the ground that the petition contained a false and malicious libel. It was found that in fact the communication was made *bonâ fide*, and that there was some ground for some of the imputations:

Held, the petition was a privileged communication and the alleged libel was not actionable.

The question when malice may be presumed, discussed.

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* Second Appeal No. 1725 of 1888.

SECOND APPEAL against the decree of G. T. Mackenzie, Acting District Judge of Kistna, in appeal suit No. 373 of 1887 reversing the decree of Venkata Ranga Ayyar, Subordinate Judge of Ellore, in original suit No. 5 of 1886.

The plaint alleged that the defendants had presented to the Tahsildar of Bezvada a petition containing a malicious libel on the plaintiff and prayed for damages.

The plaintiff was the Zamindar of Vallur, defendant No. 1 was Munsif of one of the zamindari villages, defendants Nos. 2 to 6 were raiyats of the village. The plaintiff had applied to the District Revenue officers for the removal of defendant No. 1 from his office, and the defendants together with other persons presented a petition to the Tahsildar filed in the suit as exhibit A praying that defendant No. 1 might be retained in his office.

In this petition occurred the following passages, which were the libel complained of:—

"Subsequently the Collector appointed the present Munsif, "Ganna Ganganna. The Stree Zamindar being at enmity with "him (Ganganna), revenged him in many ways and still intends "to do so. Since he came, we, the people, are not put to much "trouble by the Zamindar's people. In case they have recourse to "evil deeds, the Munsif represents the same to the officers like "yourself. For that reason the Zamindar's people bear a grudge. "Owing to the ill-will, the Zamindar was preferring many "charges against him through his servants and others. The "officers like yourself rendered justice and dismissed them. Now "with the intent of getting him removed anyhow from the "office of Village Munsif and conferring the office of Village "Munsif upon the late Munsif or upon any one at his pleasure, "Zamindar continues to cause the like deed to be perpetrated.

"(The Zamindar) has caused several arzees to be presented to "the effect that the present Munsif is unfit and a bad man. The "Zamindar continues to present mahazar arzees in the names of "the people like ourselves forging our signatures and marks with-"out our knowledge. One of them was a mahazar arzee under "date the 28th April 1883 presented to the Head Assistant Col-"lector through post. It was referred to the Tahsildar who "summoned some of those who signed or set marks to it. Then "they gave a kyfeat stating we did not present the arzee. We do "not know its contents. The signatures were not ours. Those

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"who are at enmity with the Village Munsif have signed it. We "do not know that arzee contains the signature of Chirugupaty "Tirupatyrayudu who is a mark man and cannot sign. There- "upon Arni Narayanarow Puntulu Garu, the then Tahsildar, "intimated to the Head Assistant Collector by an arzee No. 2815, "dated 2nd July 1882, to the effect that owing to the ill-feeling "against the Village Munsif (Zamindar) continues to present "arzees forging signatures. This will be evident from a reference "to the arzee which is on the record.

"Many similar false arzees are being fabricated by Palaparty "Nagabhushanam and others who have signed the arzee now "under enquiry. Of all these matters all of the former Tah- "sildars and Mr. J. F. Fydian, the Head Assistant Collector, were "already aware. The Head Assistant Collector passed upon the "petition an order No. 134, under date the 23rd November 1881, "to the effect that the Zamindar causes perpetration of such illegal "deeds and that he wrote to the Zamindar to say that he should "not commit such illegal acts."

Presentation of the petition was admitted, but the defendants pleaded that the statements contained in it were made *bonâ fide* and without malice.

The Subordinate Judge passed a decree for the plaintiff for Rs. 1,000; but this decree was reversed on appeal by the District Judge.

The plaintiff preferred this second appeal.

Bhashyam Ayyangar for appellant.

Ramasami Mudaliar for respondents.

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

JUDGMENT.—The appellant before us is the Zamindar of Pungidigudem Vallur, in the Kistna District, and the respondents are raiyats of the zamindari village of Thoutla Vallur. The first defendant, Ganganna, who is not a party to this appeal, is the Munsif of that village, and on 8th June 1885, the respondents, in conjunction with fifty other raiyats, addressed a petition or mahazar to the Tahsildar of Bezvada praying that Ganganna might be retained in his office notwithstanding the appellant's application for his removal. That document contained several statements

reflecting upon the appellant's character, and so far as they are material for the purposes of this appeal, they are set forth in paragraph 8 of the judgment of the Subordinate Judge. The appellant alleging that they were false and malicious, brought the present suit to recover from respondents and Ganganna Rs. 2,800 as compensation for the libel. The Subordinate Judge considered that indictable offences were imputed from malice and decreed the claim, reducing however the amount of damages to Rs. 1,000. From this decision Ganganna preferred no appeal, but the respondents appealed to the District Court. The Judge set aside the decree on the ground that the communication was privileged, that prior occurrences in the zamindari justified the communication, that the respondents acted *bonâ fide*, that the language employed by them should not be too strictly scrutinized, and that it was not reasonable to expect them to distinguish between the Zamindar and his servants. Hence this second appeal.

It is first contended that exhibit A is not a privileged communication. The removal of a Village Munsif is a matter in which the respondents' interests as raiyats and residents of the village in which Ganganna had jurisdiction as Village Magistrate and Munsif were concerned. They addressed the communication to the Tahsildar in whose jurisdiction they lived when he was considering an application for the removal of the Munsif and in view to protect their interests. We entertain no doubt that the occasion of the publication confers a privilege. The principle is that a communication made *bonâ fide* upon any subject matter in which the party communicating has an interest or in reference to which he has a duty, is privileged if made to a person having a corresponding interest or duty, although it contains criminatory matter which, without the privilege, would be slanderous and actionable; *Harrison* v. *Bush*(1). The rule of public policy on which it is based is that honest transactions of business and of social intercourse would otherwise be deprived of the protection which they should enjoy. Another contention is that the reasons assigned by the Judge for setting aside the decision of the Subordinate Judge cannot be sustained in law. In this connection our attention is drawn to the following remark of the Judge: "Taking a wider "view of this question (of privilege), I consider that it is not

(1) 5 El. and Bl., 344.

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"desirable to scrutinize too strictly the language of petitions in "this country. It is very usual for petitioners in villages to "express their grievances in an exaggerated emphasis. An officer "of any experience deducts these exaggerations from a petition "which he reads and usually the opponent does not take any notice "of these exaggerations. If petitioners are obliged to draft their "petitions with the expectation that they will be called on to prove "every expression and every fact alluded to, they will probably "think it safest not to write petitions at all." These observations in the form in which they are made are too general and liable to misconception and there is no distinction, as far as we are aware, in the general principles on which an action of libel is to be dealt with in this country and in England. In both countries malice is a necessary ingredient in every action of libel. When a defamatory communication is unauthorized, malice is presumed; but when the communication is privileged by the occasion on which it is made, the ordinary presumption is repelled and a special presumption takes its place, viz., that the communication is made not with intent to defame but in furtherance of the lawful purpose for which the privilege is recognized to exist. This special presumption may again be displaced in its turn by actual proof that the communication is not fairly and honestly made but that it is made with a malicious spirit or from some indirect motive. The material question always is as to the state of mind with which the imputation is made. If the imputation is made with the knowledge that it is false, there is an end of the privilege. If it is made in a reckless and inconsiderate manner, if means of correct information are available and they are wilfully overlooked and no inquiry is made, there arises a presumption that there can be no honest belief where there is no honest effort to arrive at the truth. But the intrinsic and the extrinsic evidence produced in cases of this kind may suggest several intermediate views of actual facts in regard to malice. The expressions used, motives attributed, the relevancy of the statements made, their total or partial falsehood, the antecedent conduct of the parties in relation to the matter under inquiry, and the state of feeling between them at the time of the libel are all evidence which the Judge or jury may consider in coming to a finding, but the weight due to them depends on the circumstances of each case. The expressions used may be stronger than the exigency of the occasion warrants, the

imputation may be partly untrue, and the matter imputed may be criminatory, and yet the Judge or jury may say that though when taken alone they may be somewhat in excess of the privilege, the libel is not malicious, regard being had to the communication as a whole, and reasonable allowance being made for the imperfect education and social condition of the defendants, and the feeling under the influence of which the communication is made. Within this limit the observations of the Judge are perfectly legitimate, and we see no reason for saying that they have been misapplied in the present case.

Another point urged upon us is that the Judge is in error in saying that previous occurrences in the zamindari either justify the communication or prove that it was made in good faith. The Judge observes that 7 or 8 years ago there was discord between the Zamindar and some of his raiyats, that there were numerous cases in the Courts, some of which were thrown out, but in one case the Sessions Court convicted one of the zemindari officials of forging a paper purporting to be an agreement by raiyats to cultivate and that the first defendant, Ganganna, was concerned in some of the cases in Court. Having regard to the antecedent state of things found by the Judge, we cannot say that there was no apparent ground for several of the imputations, as to the Village Munsif being obnoxious to the Zamindar, and as to his desire to get rid of him. The imputation that the Zamindar caused false charges to be brought against the Village Munsif and caused mahazars to be presented with forged signatures are the worst of the accusations. As regards even these, the respondents refer to specific occurrences, and the facts they mention afford some ground, though the expressions used are strong and some of the statements are probably not accurate. We cannot say there was no ground at all for any of the imputations and that actual malice must be inferred as a matter of law. As to the Zamindar's connection with the acts imputed to his men, exhibit A refers to a prior conviction for forgery committed in the interests of the Zamindar and to a report made on inquiry that some of the signatures to a mahazar presented against the Village Munsif were not genuine. As to the oral evidence in the case it was conflicting. We are unable to hold under all the circumstances of the case that there are sufficient grounds for interference in second appeal. We dismiss it with costs.