

KASTURI
 V.
 VENKATA-
 CHALAPATHI.

the plaintiff as execution-creditor was bound to specify the judgment-debtor's interest so far as he had been able to ascertain it.
Tinnappa v. Murugappa(1).

On this ground the decrees of the Courts below must be reversed so far as second defendant is concerned and the plaintiff's suit dismissed with costs throughout.

APPELLATE CRIMINAL.

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

HAYES

v.

CHRISTIAN.*

1892.
 February 24.
 March 1.

*Indian Penal Code—Act XLV of 1860, s. 499—Defamation—Privilege of party—
 Appeal from the Resident's Court, Bangalore—Limitation.*

A person who was being defended by counsel on a criminal charge interfered in the examination of a witness and made a defamatory statement with regard to his character. He was now charged with defamation and convicted in the Resident's Court at Bangalore.

On an appeal to the High Court, preferred more than sixty days after the conviction:

Held, (1) that the appeal should be admitted:

(2) that the occasion was not privileged and the words complained of were uttered maliciously and the conviction was right.

APPEAL against the judgment and sentence of the Assistant to the Resident at Mysore and Justice of the Peace for the Town of Bangalore in Criminal Revision Case No. 1 of 1891.

The facts of the case are stated in the judgment of the High Court sufficiently for the purposes of this report.

The sentence appealed against was pronounced on 10th October 1891 and this appeal was filed on 6th January 1892.

The appeal having come on before a single Judge for admission, it was referred to a Bench of two Judges with reference to the question as to whether or not it was barred by limitation.

It then came on before *Collins, C.J.*, and *Parker, J.*

(1) I.L.R., 7 Mad., 107.

* Criminal Appeal No. 11 of 1892.

Sundara Ayyar for appellant contended that the Criminal Procedure Code had no application to this appeal, which was preferred to the High Court under the Extradition Act. He referred to *Gazette of India* notifications No. 2252 I, dated 7th August 1883, and No. 178 J, dated 23rd September 1874, and cited *Ward v. The Queen*(1).

HAYES
v.
CHRISTIAN.

Their Lordships passed an order admitting the appeal.

Sundara Ayyar for appellant.

Complainant in person.

JUDGMENT.—The appellant, Mr. J. W. Hayes, a Barrister by profession, appeals against a conviction for defamation under section 500 of the Indian Penal Code.

It appears that on the 2nd September 1891 Mr. Hayes was prosecuted for defamation, the complainant being Mr. Christian, who is described as being a Minister of the Gospel. Mr. Hayes was represented by counsel, and when Mr. Christian was in the witness box Mr. Hayes said to him “you cheated people at Hyderabad and had to leave the ministry.” For using this expression Mr. Hayes was prosecuted before the Court of the First Assistant to the Resident of Mysore and convicted under section 500 of the Indian Penal Code. Mr. Hayes through his counsel admitted that he used the defamatory words complained of, but contended that, being an accused person, he was privileged. It is argued before us that an accused person is absolutely privileged as to any statement he makes or any words that he utters during the progress of the case, and that no proceeding can be taken against him either civilly or criminally for any defamatory statement that he makes, and a number of English cases are cited in support of that proposition, *Munster v. Lamb*(2) being especially relied on. The utmost extent to which the English cases go is that “No action of libel or slander lies whether against “Judges, counsel, witnesses, or parties for words written or spoken “in the ordinary course of any proceeding before any court or “tribunal recognized by law.” See *Dawkins v. Lord Rokeby*(3). Although we are not bound to follow the English cases cited, yet we fully recognize the great importance of allowing the utmost freedom to counsel, parties, and witnesses during the progress of a case, and if the counsel for Mr. Hayes, or Mr. Hayes if he

(1) I.L.R., 5 Mad., 33. (2) L.R., 11 Q.B.D., 588. (3) L.R., 8 Q.B., 265.

HAYES
*
CHRISTIAN.

had been defending himself, had asked Mr. Christian in cross-examination whether in consequence of cheating people at Hyderabad he had not been turned out of the ministry, the question could not have been made the subject of a civil action, nor would any criminal proceeding lie for defamation under section 500 of the Indian Penal Code. It must be borne in mind that in India Act I of 1872 gives the Court power to decide whether the witness shall be compelled to answer questions affecting the credit of such witness by injuring his character, and the Court has also power to prevent any question being put to a witness merely for the purpose of giving him annoyance. See sections 146 to 152 of Act I of 1872.

In the case before us it is not contended that the words are true, and it appears that Mr. Hayes at the time he uttered the words was not defending himself, neither was he called upon by the presiding Magistrate to answer or explain the charge made against him. Mr. Hayes, therefore, although appearing by counsel, chose to interfere during the examination of a witness, and to make grossly defamatory remarks respecting the character of such witness, it cannot, therefore, be said that Mr. Hayes used the words complained of in the *ordinary course* of any legal proceeding. We think, therefore, that even under the English cases cited the occasion on which Mr. Hayes used the words were not privileged. Mr. Hayes is, however, charged under section 500 of the Indian Penal Code, and we hold that the words are clearly defamatory, and, therefore, fall within the section. We hold further that the occasion was not privileged, that the words were not uttered in good faith but maliciously, and that Mr. Hayes is not protected by any of the exceptions to section 499 of the Indian Penal Code. We therefore dismiss the appeal and confirm the conviction and sentence.
