K. Narayana Rao for petitioner.

The Public Prosecutor, *contra*.

ORDER.—The petitioner's pleader contends that the search-list is the only evidence admissible as to the matters dealt with therein and relies on the case of *Abdul Khadir and others* v. *Queen-Empress*(1). We are unable to accept that ruling as correct. If it were adopted it would lead to results most prejudicial to the proper trial of accused persons. And we observe that a directly contrary view was taken in the case of *The Public Prosecutor* v. *Sarabu Chennayya*(2) We think this latter view is correct. We do not think the sentence excessive.

We dismiss the petition

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Krishnaswami Ayyar

1909. December 18.

IRENE FANNY COLQUHOUN (PLAINTIFF), APPELLANT,

v.

FANNY SMITHER (DEFENDANT), RESPONDENT.*

Contract of marriage, action for procuring breach of—Parent or guardian procuring breach maliciously or by false representations liable.

An action is maintainable against a person for inducing a party to break a contract of marriage entered into by such party.

A parent or guardian inducing a child or ward to break such a contract is liable when such parent or guardian does so maliciously or by false representations.

Although malice is not the gist of the action in such cases, it may, if alleged and proved, displace the protection or privilege which arises from the relation between the party procuring the breaking of the contract and the party breaking it.

APPEAL against the judgment of Wallis, J., dated 16th February 1909, made in the exercise of the ordinary original jurisdiction of this Court in Civil Suit No. 369 of 1908.

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(1) Weir's Crl. Rulings, 4th Ed., Vol. II, p. 515
(2) (1910) I.L.R., 33 Mad., 413.
* Original Side Appeal No. 6 of 1909.

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The facts are sufficiently stated in the judgment appealed from, the material portions of which are as follows:—

"This is a suit by the plaintiff against the defendant for maliciously procuring the defendant's son to break his promise of marriage to the plaintiff and a preliminary issue has been framed as to whether the plaint discloses any cause of action.

It is not suggested that such a suit has ever been brought or maintained in any Court in which the common law is administered but it is said that it is covered by the authority of *Quinn* v. *Leathem*(1) a case which was decided by the House of Lords after much controversy and has since been followed not only in England but also by the Courts of the United States.

It was there laid down by Lord Macnaghten that 'a violation of a legal right committed knowingly is a cause of action and that it is a violation of a legal right to interfere with contractual regulations recognised by law if there be no sufficient justification for the interference.'

If then the principle of *Quinn* v. *Leathem*(1) is applicable to interference with contracts to do particular acts is there any ground for excepting interference with contracts to marry and allowing any one, if he can, to procure another not to fulfil his or her promise of marriage? The action for breach of promise is no doubt rather a peculiarity of the common law; it is not allowed in some other systems and great authorities have been in favour of abolishing it. Still, in the absence of authority, I am not prepared to hold and it is unnecessary for the purposes of this case to hold that procuring a breach of promise of marriage can in no case be an actionable wrong and the case put by Joyce, J., of the jilted suitor suing his successful rival may be left until it arises. This is a suit against a mother for procuring a breach of promise of marriage by her son and I am of opinion that such a suit will not lie, because I think the relation of mother and son is a sufficient justification for the mother's interference to make it not actionable. Following the English enactments the Indian Christian Marriage Act, 1872, to which the parties are subject does not endeavour to prevent persons of full age from marrying without the consent of their parents or even strike with nullity marriages contracted under age without such consent, probably because the recognition of such

(1) (1901) A.C., 495 at p. 501.

irregular marriages is regarded as the lesser evil. It does not as the French Law does or did until quite recently render marriages of persons under twenty-five null and void if entered into without the parents' consent, and even after that age require three formal demands or "sommations respectueuses" to be addressed to the parents and so give them fresh opportunities of urging their objections. But because our law does not enable parents to prevent children of full age from contracting marriages of which they disapprove, it does not follow that parents have no interest or duty to dissuade their children from contracting marriages which they consider unsuitable. In my opinion they have such an interest and duty and a right of interference based thereon and it would, I think, be carrying respect for the sanctity of contracts to altogether unreasonable lengths if such interference were to be held actionable. Generations of parents have exercised this right of interference without question and I am not prepared to question it now.

As to the extent of the right if it exists, it cannot, I think, be subject to the parents subsequently satisfying a Judge or jury that these were good grounds for interference. Such a limited right of interference would be highly perilous to exercise and indeed illusory. Nor can such interference be rendered actionable by alleging and proving that it was malicious. As now settled by the cases already referred to malice is not the gist of an action such as this but interference without sufficient justification and in this case the plaint itself discloses sufficient justification. The further allegation in paragraph 8 that the plaintiff procured the breach of promise by false representations does not disclose a cause of action as no false representations are pleaded. There is of course no allegation in the plaint that the defendant has either libelled or slandered the plaintiff.

In the result I hold that the plaint discloses no cause of action and accordingly reject it and dismiss the suit with costs."

Against this judgment the plaintiff appealed.

V. Visvanatha Sastri for appellant.

E. R. Osborne for respondent.

JUDGMENTS (Sir CHARLES ARNOLD WHITE, C.J.).—This is an appeal from the judgment of Mr. Justice Wallis dismissing the suit upon a preliminary issue: "Does the plaint disclose any cause of action." The suit is no doubt a peculiar one. So far as I know it

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is a case of first *impression* and the learned Judge points out in his judgment that it is not suggested that such a suit has ever been brought or maintained in any court in which the common law is administered. The suit is one for damages brought against the mother of a man who had promised to marry the plaintiff The plaint sets out that the plaintiff had agreed to enter into a contract of marriage with the son of the defendant. Then it alleges that the son of the defendant had broken the promise to marry the plaintiff. The allegations in paragraph 6 of the plaint are that the defendant set up the son to make some utterly false and frivolous statements against the plaintiff to justify the refusal and the son finally refused to perform the contract in consequence. Paragraph 8 alleges that the defendant has for some illegal and ulterior purpose of her own maliciously and by false representations and otherwise induced and instigated her son to break the contract and the son refused to perform the contract in consequence. As I have said, the suit was disposed of by the learned Judge on the preliminary issue: "Does the plaint disclose any cause of action?" Therefore we must deal with the case as if we were deciding it on what under the old English Practice was known as 'Demurrer', that is, we must assume that every allegation in the plaint is true.

The learned Judge proceeds in his judgment to discuss the various authorities in which the doctrine, which was first laid down, I think, in *Lumley* v. *Gye*(1) arose for consideration. He refers to the cases of *Quinn* v. *Leathem*(2) and *Glamorgan Coal Company* v. *South Wales Miners' Federation*(3). And he also refers to the *National Phonograph Company, Limited* v. *Edison Bell Consolidated Phonograph Company, Limited*(4) and to *Allen* v. *Flood*(5). All these are cases decided by the House of Lords. To the cases discussed by the learned Judge, we may add a recent decision of the House of Lords in *Conway* v. *Wade*(6).

Having finished his discussion of the authorities, the learned Judge proceeds "If the principle of *Quinn* v. *Leathem*(2) is applicable to interference with contracts to do particular acts, is there any ground for excepting interference with contracts to marry

(1) (1853) 2 E. & B., 216.
(2) (1901) A.C., 495.
(3) (1903) 2 K.B., 545.
(4) (1908) 1 Ch., 335.
(5) (1898) A.C., 1.
(6) (1909) A.C., 506.

and allowing any one, if he can, to procure another not to fulfil his or her promise of marriage." Then he observes "The action for breach of promise is, no doubt rather a peculiarity of the common law" and proceeds "In the absence of authority I am not prepared to hold and it is unnecessary for the purposes of this case to hold that procuring a breach of promise of marriage can in no case be an actionable wrong." Then the learned Judge goes on: "This is a suit against a mother for procuring a breach of promise of marriage by her son and I am of opinion that such a suit will not lie because I think the relation of mother and son is a sufficient justification for the mother's interference to make it not actionable". With all respect I am unable to agree with the learned Judge, because it seems to me that while he was anxious not to extend this particular branch of the law further than it had already been carried under the decisions to which he refers, he did, in effect, extend the law, or at any rate, he has laid down a novel proposition of law, which I am not prepared to accede to. The learned Judge seems to me to hold that the doctrine, which is now well established that the procuring of a breach of contract by a third party may be an actionable wrong is not applicable when the breach is a breach of promise to marry and where the relation between the party who procures the breach and the party who broke the contract is that of mother and son. Now I am not prepared to go so far as that. I am not prepared to say that the mere fact of the relationship of mother and son, in itself, excludes the operation of what is now a well-established doctrine of law.

Then later on in his judgment the learned Judge says:—"Nor can such interference" (that is the interference by a mother with a contract to marry which is entered into between her son and somebody else) "be rendered actionable by alleging and proving that it was 'malicious.' As now settled by the cases already referred to, malice is not the gist of an action."

I entirely agree that malice is not the gist of the action. But it may well be that, if malice is alleged and proved, it may displace the protection or the privilege or whatever we may call it, which arises from the relation between the party who procures the breaking of the contract and the party who breaks the contract. Then the learned Judge goes on: "As now settled by the cases already referred to, malice is not the gist of an action such as this, but interference without sufficient justification and, in this case,

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the plaint itself discloses sufficient justification." There again with all respect I find myself unable to agree with the learned Judge, because I cannot find within the four corners of the plaint allegations which show sufficient justification in the party who induced the breaking of the contract. It may be that, if an order for particulars had been made (the result of which would be that at the trial the plaintiff would be pinned down to those particulars and would be precluded from giving evidence as to matters which were not referred to in the particulars), it may be that reading the plaint and the particulars it would appear from what was said in the particulars, or what was not said in the particulars, that the plaint itself discloses sufficient justification on the part of the party who induced or procured the breach of the contract. But, in the absence of particulars and on the plaint as it now stands, I am unable to say that the plaint itself discloses sufficient justification.

Then the learned Judge goes on "The further allegation in paragraph 8 that the defendant procured the breach of promise by false representations does not disclose a cause of action as no false representations are pleaded." It seems to me that in paragraph 8 there is a general allegation of false representations.

It may be the particulars of that allegation, if given, would show that the alleged false representations are not of such a character as to disclose a cause of action. But in view of the general allegation of false representations I am unable to say that the plaint does not *primâ facie* at any rate, disclose a cause of action in regard to the false representation. I think the decree must be set aside and the case sent back to the Court of First Instance. Costs will abide the event.

KRISHNASWAMI AYYAR, J.—I agree in the order of remand. I agree with Mr. Justice Wallis in holding that malice is not the gist of the action. But it does not follow from that statement that where a justification is pleaded, the presence of malice may not remove the justification. I adopt the statement of law made by Sir Frederick Pollock at page 329, 8th edition, of his book on 'Torts.' He says:—"It cannot be reasonably maintained, for example, that a parent or guardian may not advise his daughter or ward to break off an improvident engagement to an unworthy suitor." But as it is alleged in this case that the breaking of the engagement is procured maliciously and by means of misrepre

sentations it seems to me that the person so procuring a breach is not protected. Sir Frederick Pollock also points out that the disposition of the Courts is to be very cautious in admitting exceptions to the rule of liability for procuring breaches of contract. I am not able to appreciate the view of Mr. Justice Wallis that because the defendant in this case stands in the position of mother, *ipso facto*, she is justified in procuring the breach, although it may be she has done so maliciously and by misrepresentations to her son. Costs will abide the event.

A. E. Rencontre—Attorney for respondent.

APPELLATE CIVIL.

Before Mr. Justice Miller and Mr. Justice Munro.

1909. November 29, 30. December 1. 1910. January 11.

A. N. RAMASAMI AIYAR AND ANOTHER (PLAINTIFFS IN BOTH), APPELLANTS IN BOTH,

v.

VEERAPPA CHETTY AND OTHERS (FIRST, SECOND AND THIRD DEFENDANTS IN BOTH), RESPONDENTS IN APPEAL SUIT NO. 187 OF 1904 (FIRST, SECOND AND THIRD RESPONDENTS IN APPEAL SUIT NO. 188 OF 1904).

ARUNACHALA PANDARAM AND OTHERS (FOURTH, FIFTH, SIXTH AND SEVENTH DEFENDANTS), RESPONDENTS IN APPEAL SUIT NO. 188 OF 1904. *

Executor de son tort, *liability as—Widow in possession of husband's undivided property not liable as executor* de son tort, *when such property has devolved on coparceners—Decree, suit on—No suit maintainable on decree, when the passing of the decree gives no cause of action independent of the original cause of action*—Res judicata—*Subsequent suit on same cause of action barred though different reliefs claimed—Suit against partners, parties to.*

On the death of an undivided coparcener, the estate vests in the survivors and there is no estate belonging to a deceased person.

The widow of the deceased, by the fact of being in possession of a portion of the joint family property, does not become liable as an executor *de son tort*, as she has not intermeddled with any estate belonging to a deceased person.

A suit is not maintainable on a decree, when the mere passing of the decree does not give rise to a cause of action distinct from the original obligation.

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* Appeals Nos. 187 and 188 of 1904.