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attention of the learned Judges who decided these cases, does not appear to have been drawn to the difficulty that would arise in collecting debts of the minor heir of a deceased person, if this view of the law were to be accepted as sound.

On the other hand the Calcutta and Allahabad High Courts have held in *Kali Coomar Chatterjea* v. *Tara Prosunno Mookerjea*(1) and *Ram Kuar* v. *Sardar Singh*(2) that a certificate can be granted to a minor. We think this is the correct view and dismiss the appeal with costs.

APPELLATE CRIMINAL.

Before Sir Charles Arnold White Chief Justice, Mr. Justice Sankaran Nair and Mr. Justice Ayling.

1911. October 6, 10 & 13. 1912. February 28 & 29, and March 15.

In re P. VENKATA REDDY (ACCUSED IN CALENDAR CASE No. 1 OF 1911 ON THE FILE OF THE JOINT MAGISTRATE'S COURT OF GODAVARI), PETITIONER.*

Indian Penal Code (Act XLV of 1860), sec. 499—Defamation—Absolute privilege, doctrine of, applicable under sec. 499—Accused, statement of, in course of judicial proceedings.

A person charged with an offence was on his trial asked by the Magistrate what he had to say and in reply made a statement defamatory of one of the prosecution witnesses.

Held: that the statement was absolutely privileged and that he was not liable to be punished in respect thereof for an offence under section 499, Indian Penal Code. Although the English doctrine of absolute privilege is not expressly recognized in the section, it does not necessarily follow that it was the intention of the legislature to exclude its application from the law of this country.

PETITION under sections 435 and 439 of the Criminal Procedure Code (Act V of 1898), praying the High Court to revise the judgment of F. W. R. ROBERTSON, the Joint Magistrate of Godavari, in Calendar Case No. 1 of 1911.

The facts of this case are set out in the order of SPENCER, J.

B. Narasimha Rao for the petitioner.

J. L. Rozario, Acting Public Prosecutor on behalf of Government.

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(1) (1879) 5 C.L.R., 517. (2) (1898) I.L.R., 20 All., 352.

* Criminal Revision Case No. 216 of 1911.

This case first came on for hearing before the Hon'ble Mr. Justice SPENCER who made the following

ORDER.—The petitioner was accused in a case of hurt brought against him on the complaint of a relative. At the close of the examination of the accused he caught one of the prosecution witnesses by the arm and dragging him before the Magistrate declared that he was a rogue and a forgerer. The Joint Magistrate of Gōdāvari, who tried the case of defamation arising out of these words, has found that the expressions were part and parcel of the accused's defence statement, or in other words, that they were made in the course of a legal proceeding. He has also found a want of good faith. These findings may be accepted. On them the petitioner has been convicted and fined Rs. 20 for an offence under section 500, Indian Penal Code.

The learned vakil who appears for the petitioner in the Revision Petition claims "absolute privilege" for this statement on the strength of the rule of English Law that "no action of libel or slander lies whether against judges, counsel or witnesses or parties for words written or spoken in the ordinary course of any proceeding before any Court or tribunal recognized by law." He maintains that this principle has been applied so far as this Presidency is concerned to the case of judges, counsel, witnesses and accused.

If the course of decisions in this Presidency had been quite uniform, I should feel bound to follow it in spite of my own opinion that the principle laid down in *Emperor* v. *Ganga Prasad*(1), is the correct one. KNOX, C.J., observed there, "it appears to me that since the code was enacted, the question is one which has to be decided by the Indian Penal Code and by the Evidence Act of 1872, and not by any maxim, however excellent that maxim may be, which has been universally recognised in England, but has not obtained universal recognition in this country, unless indeed it can be shown beyond room for reasonable doubt that the question was never considered in either Code." He proceeded to discuss the bearing of section 105 of the Evidence Act on the exceptions to section 499 of the Indian Penal Code. It seems monstrous that an accused person, just because he happens to occupy the position of an accused, should be entitled

(1) (1907) I.L.R., 29 All., 685 at p. 696.

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to utter any malicious untruths that may come into his head and so wantonly defame the complainant's character. The common instance may be given, so far as my experience extends in this Presidency, of an accused person alleging without good faith that his prosecution is due to his having enjoyed immoral intimacy with one of complainant's female relations. A blackguardly attempt to besmirch the honour of a family in retaliation for an honest prosecution ought to be punishable at law and according to the Indian Penal Code it is. But in this Presidency the decisions are not all one way, so far at least as accused persons are concerned.

The case of *Hayes* v. *Christian*(1), may be briefly passed over as it was found there that the accused did not use the words complained of in the *ordinary course* of any legal proceeding. The cases of *Hinde* v. *Baudry*(2), *and Nadu Gounden* v. *Nadu Gounden* 3) can easily be distinguished because the defendants were found to be 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." The Court implied that the result would have been different if the defendants had used the occasion 'for the gratification of private ill-will.' In Criminal Revision Case No. 76 of 1899 MOORE, J., laid down what appears to me to be the correct principle that the case of a party to a criminal proceeding, who is prosecuted criminally for defamation in connection with statements made by him as such, must be dealt with under the principles laid down in the Indian Penal Code. SUBRAHMANIA AYYAR, J., who sat with him, found it difficult to reconcile this view with the *ratio decidendi* of *Manjaya* v. *Sesha Shetti*(4). But he ultimately decided to uphold the conviction on the ground that the prisoner's statement (that the grandfather once kept the complainant's wife as his concubine) was false and malicious and therefore the ends of justice did not call for the High Court's interference. That case stands on a similar footing with the present as regards the facts. Now the policy which determined the decision of *Manjaya* v. *Sesha Shetti*(4), is intelligible. It is that witnesses should not be exposed to the fear of prosecution except for perjury. The same reasoning will apply to the case of persons examined by

(1) (1892) I.L.R., 15 Mad., 414. (2) (1876) I.L.R., 2 Mad., 13.
(3) (1889) 1 Weir, 589. (4) (1888) I.L.R., 11 Mad., 477.

the police in the course of a criminal investigation under section 161, Criminal Procedure Code, for if they do not tell the truth they are liable to prosecution for giving false information to a public servant (section 182, Indian Penal Code)—*vide Queen-Empress* v. *Govinda Pillai*(1). So also with parties to civil suits who like witnesses may be prosecuted for giving false evidence, if they speak falsely—*vide In the matter of Alraja Naidu*(2). The case of counsel has to be specially considered, for as observed by the Master of the Rolls in *Munster* v. *Lamb*(3). "If any one needs to be free of all fear in the performance of his arduous duty an Advocate is that person"—*vide Sullivan* v. *Norton*(4). Public policy demands also that Judges should be protected from the consequences even of words uttered by them "falsely, maliciously and without reasonable cause," as it is for the benefit of the public that they should discharge their functions without favour and without fear—*vide Raman Nayar* v. *Subramanya Ayyan*(5). But it is not for the benefit of the public that accused persons should be permitted to slander their accusers with impunity, and as pointed out by MOORE, J., in *Nadu Gounden* v. *Nadu Gounden*(6) already quoted, they cannot be prosecuted for giving false and defamatory statements while under examination under the law as it stands at present in India.

In the case of *In re Govindappa*(7), the provisions of section 499, Indian Penal Code, were applied and the statements were found to have been made in good faith for the protection of the interests of the persons making them. In the case of *Murugesa Pillai* v. *Papathi Ammal*(8), the statement of the Counsel that he had kept the complainant as his concubine was found to be true and relevant as showing the motive for the complaint. In the present case the accused's statement that the witness was a rogue and forgerer might have been relevant, if true, but no attempt was made to prove it to be true, and the defence at the trial of defamation was a denial of having made it.

In dealing with the present Revision Petition I should be inclined to follow the law as laid down by MOORE, J., in dealing

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(1) (1893) I.L.R., 16 Mad., 235.
(2) (1907) I.L.R., 30 Mad., 222.
(3) (1883) 11 Q.B.D., 588.
(4) (1887) I.L.R., 10 Mad., 28 at p. 34
(5) (1894), I.L.R., 17 Mad., 87.
(6) (1869) 1 Weir's G.R., 589.
(7) (1884) I.L.R., 7 Mad., 36.
(8) (1897) 1 Weir's Law of Offences and Criminal Procedure (Criminal rulings), 612.

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with the statements of an accused person, but I cannot shut my eyes to the fact that there has been a general tendency in this High Court to apply the principle of English Law of "absolute privilege" freely to all parties whether they are parties to Civil or Criminal cases, with the exception of that one case, and in that case SUBRAHMANIA AYYAR, J., was inclined to dissent from the view of MOORE, J. In this connection I may refer to two recent unreported cases [Second Appeal No. 250 of 1906 —*Pachaiperumal Chettiar* v. *Dasi Thangam*(1)—and Criminal Revision Case No. 295 of 1908] which applied the English rule to accused persons and to parties generally, rather than the provisions of the Penal Code and the Evidence Act. It is also stated in Gour's Penal Law of India, paragraph 4174, page 2129, that statements of judges, counsel and parties, even though they be not made in good faith, are according to the view of the Courts at Calcutta, Madras and Bombay protected because they are made before a Judge while according to the Courts of Allahabad and the Punjab such statements possess no special immunity but must be judged by the ordinary standard of other privileged statements. If this is correctly stated to be the general trend of decisions of the Madras High Court, I feel some doubt if I can follow MOORE, J., in the above ruling and I therefore direct the case to be placed before a Bench of two Judges of this Court. I may add that as regards other High Courts the decisions are not so uniform as the above extract from Mr. Gour's book would lead one to suppose, for instance in *Augada Ram Shaha* v. *Nemai Chand Shaha*(2), the theory of qualified privilege judged by the Indian Penal Code is laid down for statements of parties but in *Golap Jan* v. *Bolanath Khettry*(3), absolute privilege is considered to be their right.

In accordance with the above order, this case again came on for hearing before SUNDARA AYYAR and PHILLIPS, JJ., who made the following

ORDER OF REFERENCE TO A FULL BENCH.—The order of SPENCER, J., directing the case to be posted before a Bench of two Judges cites the principal cases on the point arising for decision in this case, namely, whether the statement of a person charged with an offence, when asked by the Court what he had

(1) (1908) I.L.R., 31 Mad., 400. (2) (1896) I.L.R., 23 Calc., 867.
(3) (1911) I.L.R., 38 Calc., 880; S.C., 15 C.W.N., 917.

to say, is an absolutely privileged statement so as to absolve him from liability to be punished for an offence under section 499, Indian Penal Code. There is much conflict of authority on the point. The question is one of considerable importance and likely to arise frequently. We therefore consider it desirable that it should be decided by a Full Bench, and accordingly refer the following question :—

Is the statement of a person charged with an offence in answer to a question by the Court trying him, "What have you to say," an absolutely privileged statement so as to make him not liable to be punished for an offence under section 499, Indian Penal Code, in respect of the statement?

And lastly upon perusing the petition and judgment of the lower Court and record in the case and order of reference of this Court, the Court expressed the following opinion :—

CHIEF JUSTICE.—The question which has been referred to us is this—"Is the statement of a person charged with an offence in answer to a question by the Court trying him "What have you to say," an absolutely privileged statement so as to make him not liable to be punished for an offence under section 499, Indian Penal Code, in respect of the statement?" There can be no question that under the law of England the occasion would have been absolutely privileged. Mr. Rosario, who argued in support of the view that under the law of this country the statement was not privileged unless the prisoner could show that it was made in good faith within the meaning of the ninth exception to section 499 of the Indian Penal Code, has conceded this. The law of England is that there are occasions when it is for the public interest that persons should not be in any way fettered in their statements. In this case the privilege is absolute and no action lies for words spoken. The occasions are (1) Parliamentary Proceedings, (2) Judicial Proceedings and (3) Naval and Military affairs, and the affairs of State generally. See Odgers on 'Libel and Slander,' 5th Edition, page 230.

With regard to the absolute privilege in the case of judicial proceedings under the English law, I need only refer to the leading case of *Dawkins* v. *Lord Rokeby*(1), and the judgment of LOPES, L.J., in *Royal Aquarium and Summer and Winter Garden Society* v. *Parkinson*(2). The Lord Justice said "The

(1) L.R., 7 H.L., 744 S.C., (1873) L.R., 8 Q.B., 255.

(2) (1892) I.Q.B., 431, at p. 451.

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authorities established beyond all question this: that neither party, witness, counsel, jury nor judge can be put to answer civilly or criminally for words spoken in office; that no action for libel or slander lies, whether against judges, counsel, witnesses or parties, for words written or spoken in the course of any proceeding before any Court recognised by law, and this though the words written or spoken were written or spoken maliciously, without any justification or excuse, and from personal ill-will and anger against the person defamed."

The question we have to determine is whether this Common law doctrine of absolute privilege is part of the law of this country, or whether on the true construction of section 499, Indian Penal Code, the law of defamation as laid down in that section excludes the application of this doctrine. The contention in support of the latter view was that the law of defamation, so far as this country was concerned, was created by section 499, and inasmuch as that section contains no reference to this English common law doctrine of absolute privilege, it should be inferred that it was the intention of the legislature that it should form no part of the law of this country. In my opinion, it does not necessarily follow that, because this doctrine is not expressly recognised in the section, it was the intention of the legislature to exclude its application from the law of this country. The provisions of the Indian Penal Code and also those of the Evidence Act of 1872 are mainly based upon the English law and it is to be observed that, whenever the legislature in this country intended to depart from the English law, they made their intention clear by express enactment. As regards the Evidence Act, I may refer to section 132 and section 167. As regards section 499 of the Penal Code, the legislature has made it clear, by express enactment, that in certain respects they intended to depart from the English law of libel and slander. For instance, under the Penal Code, slander of a private person is a criminal offence: it is not so in England. It is not to be supposed that the framers of the Penal Code had not before their minds the doctrine of the English law with regard to the question of absolute privilege; and it seems to me that in dealing with a matter of such importance, if they had intended to exclude its application, they would have made their intention clear and would not have left it to be a matter of negative inference. Mr. Rosario

argued that only a qualified privilege existed in connection with the occasion of judicial proceedings and that the plea of privilege was only open to counsel, party, witness or prisoner subject to the *obligation of proving that the imputation conveyed by the* defamatory statement was made in good faith within the meaning of the ninth exception to section 499. If this were so, one would have expected to find amongst the exceptions and illustrations in section 499 some reference to a case of qualified privilege in connection with a statement made in the course of judicial proceedings. Not only do we find no reference to a case of absolute privilege as recognised by the law of England, but we find no reference to any case of qualified privilege in connection with judicial proceedings. The inference which I should draw from this would be that it was not the intention of the legislature to exclude the application of this doctrine of the English Common law from the law of defamation in India. The *exceptions* would seem to have been drafted with reference to the occasions of qualified privilege as recognised by the law of England, omitting all reference to the question of privilege in connection with statements made in judicial proceedings or to the other classes of absolute privilege recognised by the law of England. There may be said to be five groups of exceptions to the section, all relating to occasions as to which qualified privilege is recognised. Exception I corresponds to the plea of justification. Exceptions II, III, V and VI correspond to the plea of fair comment, on a matter of public interest. Exceptions VII and VIII cover the cases of censure by a lawful authority passed in good faith, and accusation made to a person in lawful authority in good faith. Exceptions IX and X cover the cases of imputation made in good faith by a person for the protection of his interests or for the public good, and the case of caution intended for the good of the person to whom it is conveyed or for the public good. Exception IV covers the plea of fair report of public proceedings.

I do not think that the canons of construction laid down by Lord HERCHELL in *Bank of England* v. *Vagliano Brothers*(1) are applicable here. His Lordship said "I think the proper course is in the first instance to examine the language of the statute and

(1) (1891) A.C., 107 at pp. 144 and 145.

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to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with enquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view." Now the English Bills of Exchange Act, which was the subject of Lord HERCHELL's observations, was a statute passed with the object of codifying the law as it then stood. The object of section 499 of the Code was to constitute defamation a criminal offence on lines which, generally speaking, follow the English law of libel and slander. It was not intended to codify existing law but to create new law so far as this country was concerned.

This being so, in considering the intention of the legislature I think we are certainly warranted in taking into consideration what the law of England was at the time the Indian enactment was passed. If we are to seek for protection of witnesses and prisoners only within the four corners of section 499 of the Indian Penal Code or within the four corners of that enactment and the provisions of the Evidence Act, it seems to me that rather startling results would follow. In section 132 of the Evidence Act the legislature departed from the English law and enacted that a witness should not be excused from answering a relevant question on the ground that the answer would tend to criminate him, with the proviso that no such answer which a witness is compelled to give shall subject him to any arrest or prosecution or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer. The protection given by the proviso is limited to criminal proceedings. If we are to look to the statute law of this country alone, the result would be that, unless a witness could prove good faith he would, if compelled to answer, be protected from a prosecution in respect of an incriminating statement, but he would not be protected against a suit for damages. Mr. Rosario contended that the words of the proviso were wide enough to include civil, as well as criminal, proceedings. But, in my opinion, they are not. Again, if the privilege of a prisoner is to be ascertained by reference, and only by reference, to the provisions of section 499 of the Penal Code, a prisoner who

stated, in answer to a question put to him by the Court, that the witnesses for the prosecution had not spoken the truth, would, unless he could discharge the onus of showing that he made the statement in good faith, be liable to be prosecuted for the statement, and would also be liable to suits for damages at the hands of all the witnesses to whom he had imputed the giving of false evidence. It might even be said, if the occasion is not absolutely privileged and the question of privilege is to be considered only with reference to the provisions of section 499, a prisoner who pleaded not guilty, unless he could show that his plea was made in good faith, would be subject to criminal or civil proceedings. I cannot bring myself to believe that the legislature in enacting section 499 intended to bring about such a result as this.

As regards the authorities in this country, conflicting views have been taken. Speaking generally, the trend of the decisions in the Madras and Bombay High Courts is that the occasion is absolutely privileged. The trend of the Allahabad and Calcutta decisions is the other way. We have however, a decision of the Privy Council which is reported in *Baboo Gunnesh Dutt Singh* v. *Mugneeram Chowdhry*(1) which clearly recognises the rule of the English Common law as applicable in this country. In that case their Lordships pointed out that the suit, though called a suit for defamation, was in substance an action for malicious prosecution. The judgment runs :—"Their Lordships are of opinion, with the High Court, that if it had been, strictly speaking, such an action, it could not have been maintained ; for they agree with that Court that witnesses cannot be sued in a Civil Court for damages, in respect of evidence given by them upon oath in a judicial proceeding. Their Lordships hold this maxim which certainly has been recognised by all the Courts of this country, to be one based upon principles of public policy. The ground of it is this, that it concerns the public and the administration of justice that witnesses giving their evidence on oath in a Court of Justice should not have before their eyes the fear of being harassed by suits for damages ; but that the only penalty which they should incur if they give evidence falsely should be indictment for perjury."

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(1) (1873) 11 Beng. L.R. 321 (P.C.)

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It is true that this opinion was expressed with reference to a civil action for damages and there is no reference to criminal proceedings. But as regards the question of principle this, as it seems to me, makes no difference. As to this, see the judgment of SHEPPARD, J., in *Manjaya* v. *Sesha Shetti*(1). It is no doubt true that when the trial in which the question arose was held in 1866 the law of evidence had not been codified. But I do not think this has much bearing on the question that we have to decide, since section 499 of the Penal Code was in existence when this question arose for consideration before the Privy Council. Although Their Lordships do not refer to the section, it, of course, cannot be assumed that they did not consider its effect. The passage in the judgment above set out is, to my mind, a clear pronouncement to the effect that the English Common law doctrine applies in India. Their Lordships describe the doctrine as "recognised by all the Courts of this country," and "one based upon principles of public policy." As regards Madras decisions, in *Murugesa Pillai* v. *Papathi Ammal*(2) a statement made by a prisoner that the complainant was kept by him as his concubine some years and was afterwards in the keeping of another person was held to be privileged. The ground of the decision, however, was that the statement was true and fell within exception IX to section 499. In *Nadu Gounden* v. *Nadu Gounden*(3), it was found that the defamatory statement made by the accused in answer to a question if he had anything to say, was false and not made in good faith, MOORE, J., was of opinion that the question of privilege must be decided with reference to the provisions of section 499. SUBRAMANIA AYYAR, J. was of opinion that the occasion was absolutely privileged. In *Manjaya* v. *Sesha Shetti*(1) it was held that the statement of a witness while under cross-examination before a Criminal Court was absolutely privileged. In the case of *Hayes* v. *Christian*(4), this Court held that where a person who was defended by counsel on a criminal charge interfered in the examination of a witness and made a defamatory statement with regard to his character, the occasion was not privileged. The Judge no doubt

(1) (1888) I.L.R., 11 Mad., 477.
(2) (1897) 1 Weir's Criminal Rulings 612.
(3) (1889) 1 Weir's Criminal Rulings 589.
(4) (1892) I.L.R., 15 Mad., 414.

took the view that the question should be considered with reference to the provisions of section 499. But they pointed out in connection with the English law that the words complained of could not be said to have been used *in the ordinary course* of a legal proceeding. In *In the matter of Alraja Naidu*(1), the statement by a prisoner was considered to be absolutely privileged. The same view was taken in *Pachaiperumal Chettiar* v. *Dasi Thangam*(2); but there, there seems to have been a finding by the Judge who tried the case, that the questions which constituted the defamation were put in good faith. In the case of *Pudmarazu Pantulu* v. *Venkatramana Aiyar*(3), where the questions had been put in cross-examination by a vakil and the client who instructed the vakil was charged with defamation, the privilege was held to be absolute. In *Adapala Adivaramma* v. *Rabala Ramachendra Reddy*(4), where a suit for damages was brought in respect of a statement in an affidavit, the statement was held to be absolutely privileged. In the last reported Calcutta Case, *Golap Jan* v. *Bholanath Khettry*(5), the learned Judges with reference to a complaint to a magistrate, held that even if the complaint was defamatory, "the complainant was entitled to protection from suit, and this protection was the absolute privilege accorded in the public interest to those who make statements to the courts in the course of, and in relation to, judicial proceedings." The protection thus described is certainly not to be found within the four corners of section 499 of the Penal Code. I do not think that this view can be reconciled with the view taken in some of the earlier Calcutta cases. See for instance *Queen* v. *Pursoram Doss*(6), and *Augada Ram Shaha* v. *Nemai Chand Shaha*(7), where it was held that a defamatory statement made in the pleadings in an action is not absolutely privileged, and the cases reported in *Greene* v. *Delanney*(8). As regards Bombay, it was held in *Nathji Muleshvar* v. *Lálbhái Ravidat*(9), that no action for slander lies on any statement in the pleadings or during the conduct of suit against a party or witness. SARGENT, C.J., held that the rule of the English Common law was

(1) (1907) I.L.R., 30 Mad., 222.
(2) (1908) I.L.R., 31 Mad., 400.
(3) (1909) 19 M.L.J., 217.
(4) (1910) M.W.N., 155.
(5) (1911) I.L.R., 38 Calc., 880 at page 888.
(6) (1865) 3 W.R. (Cr. R.), 45.
(7) (1896) I.L.R., 23 Calc., 867.
(8) (1870) 14 W.R. (Cr. R.), 27.
(9) (1890) I.L.R., 14 Bom., 97 at p. 100.

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applicable and he observed "we doubt whether there is anything in the circumstances of this country which makes it less desirable from the point of view 'of public policy as concerning the public and administration of justice' as it is expressed by the Privy Council in *Baboo Gunnesh Dutt Singh* v. *Mugneeram Chowdhry*(1) (the case above cited), that such statements, though false and malicious, should in no case be made the subject of the civil action quite independently of the question as to their being criminally punishable."

The same view was taken by the Bombay High Court where the witness was prosecuted for defamation in the case of *Queen Empress* v. *Babaji*(2). In *In re Nagarji Tricumji*(3), the Court would seem to have been of opinion that the question of privilege must be decided with reference to the provisions of the Penal Code. As regards Allahabad, as I have said, the trend of authority is in the direction of holding that the occasion is not absolutely privileged. I may refer to the cases of *Abdul Hakim* v. *Tej Chandar Mukarji*(4), *Dawan Singh* v. *Mahip Singh*(5), *Emperor* v. *Ganga Prasad*(6), and *Isuri Prasad Singh* v. *Umrao Singh*(7).

I agree with the conclusion arrived at by RICHARDS, J. (now RICHARDS, C.J.) who dissented from KNOX, J., in the case of *Emperor* v. *Ganga Prasad*(6). This judgment is in accordance with the Madras authorities and seems to me to be based on sound principles. I would accordingly answer the question which has been referred to us in the affirmative.

SANKARAN NAIR, J. AYLING, J.

SANKARAN NAIR, J.—I concur.

AYLING, J.—I concur.

After the expression of the above opinion of the Full Bench, the Court consisting of BENSON and SUNDARA AYYAR, JJ., made the following order.

BENSON AND SUNDARA AYYAR, JJ.

ORDER.—In accordance with th edecisions of the Full Bench, the conviction is set aside and the fine, if levied, must be refunded to the petitioner.

(1) (1873) Beng., L.R., 321.
(2) (1893) I.L.R., 17 Bom., 127
(3) (1895) I.L.R., 19 Bom., 340.
(4) (1881) I.L.R., 3 All., 815.
(5) (1888) I.L.R., 110 All., 425.
(6) (1907) I.L.R., 29 All., 685.
(7) (1900) I.L.R., 22 All., 234.