1885

NILAKANT BANERJI v. SURESH CHANDRA MULLICK.

upon entirely wrong grounds. It is not consistent with itself, because it does not give to the mortgagee what the Court says he is entitled to have, but besides the inconsistency it is founded upon wrong grounds. Their Lordships hold that Khogendra is bound by the decree in the suit of 1867, and that he could not, after that decree was passed, ever come in to redeem this property.

The result is, that in their Lordships' judgment the High Court ought to have dismissed the appeal with costs, and they will now humbly advise Her Majesty to make that decree, reversing the decree of the High Court, and so restoring the decree of the Subordinate Judge. The costs of this appeal must be paid by Chunder Nath Mullick, who appears on his own behalf and also as next friend of the minor respondents.

With reference to the costs their Lordships have to observe that the bulk of the record has been unduly swelled by the insertion of a schedule upwards of 80 pages in length, containing particulars of either the property in suit or the whole of the property mortgaged, it does not matter which; in either case they are particulars which could not by any possibility have come into controversy or have aided the controversy in this present appeal. They will therefore intimate their opinion to the Registrar that in taxing the costs of this appeal he shall disallow all costs occasioned by that bulky schedule.

C. B. *Appeal allowed.*

Solicitors for the appellant: Messrs. *Watkins and Lattey.*

APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice Macpherson.

1885
August 13.

TRAILOKYA NATH GHOSE (DEFENDANT) *v.* CHUNDRA NATH DUTT *alias* SINGH (PLAINTIFF).*

Cause of action—Defamation—Slander—Damages—Consequential Damage.

A suit for damages for defamation of character involving loss of social position and injury to reputation will lie without proof of special damage.

* Appeal from Appellate Decree No. 451 of 1883, against the decree of Baboo Nuffer Chundra Bhutto, First Subordinate Judge of 24-Pergunnahs, dated the 6th of December 1882, reversing the decree of Baboo Janoki Nath Dutt, Munsiff of Alipore, dated the 17th November 1881.

Parvathi v. *Mannâi* (1) and *Srikant Rai* v. *Satcouri Saha* (2) followed (3). 1885

TRAILOKYA NATH GHOSE v. CHUNDRA NATH DUTT.

THE plaintiff in this case sued for damages on the allegation that the defendant had maliciously, in the presence of a large number of his villagers, called him a *pode*, although he is in fact a *kyasta*, in consequence of which he has lost his social position.

The plaintiff and defendant were both residents of Moradpore, where the plaintiff had always passed as a *kyasta*, and married a *kyasta's* daughter. The defendant having, as he alleged, heard from some informer that the plaintiff was not a *kyasta* but a *pode*, told the priest who performed rites for the plaintiff as well as the defendant. The priest told the plaintiff what the defendant had communicated to him, and the plaintiff thereupon, taking a number of the villagers with him, went to the defendant, and asked him if he had made the statement, and the defendant then admitted having made it. As a result, the priest refused to perform rites and ceremonies for the plaintiff, and the neighbours ceased to associate with him. He therefore brought this suit for damages. The plaintiff proved the above facts, and there was some evidence of there being bad feeling between the parties in consequence of a quarrel between the defendant and some relative of the plaintiff's. The defence was that the statement was made *bonâ fide* to the priest, and owing to religious scruples on the part of the defendant, who, had it been true, would have lost his caste, had the same priest performed his ceremonies as well as those for the plaintiff. The defendant called only one witness however, his alleged informer, who denied that he had given him the information. The first Court, while of opinion that the suit was maintainable, dismissed it on the merits. The Subordinate Judge reversed his decision and gave the plaintiff damages Rs. 50.

The defendant appealed to the High Court.

Baboo *Rash Behari Ghose*, and Baboo *Troylokya Nath Mitter*, for the appellant.

Baboo *Baikanta Nath Dass* for the respondent.

(1) I. L. R., 8 Mad., 175.
(2) 3 C. L. R. 181.
(3) See *Ibin Hossein* v. *Haidar*, *ante*, p. 109.

1885

TRAILOKYA NATH GHOSE v. CHUNDRA NATH DUTT.

The judgment of the Court (PRINSEP and MACPHERSON, JJ.) was as follows :—

This is a suit for damages on account of slander of the plaintiff by the defendant, inasmuch as the defendant maliciously, in the presence of a large number of villagers, said that the plaintiff was a *pode*, he being known not to be a *pode* but a *kyasta*. In consequence of this it is stated that the plaintiff has lost his social position, his neighbours of his own caste refusing to associate with him, and his priest refusing to perform the usual religious ceremonies.

The facts alleged have been found by both the lower Courts.

The Munsiff dismissed the suit, because he found that the slander was confidentially and in good faith communicated to the priest as a caution, and that the publicity given to it was in consequence of the plaintiff's act in assembling the villagers in order that he might in their presence challenge the defendant to repeat the observation.

The Subordinate Judge on appeal found that the defendant had acted maliciously in consequence of a quarrel between him and the plaintiff, and he also found that the injury so done to the plaintiff socially and mentally according to a Hindu point of view, was such as would entitle him to damages. He accordingly set aside the order of the lower Court.

The Subordinate Judge has not considered the point raised on appeal before us that no action for slander will lie without proof of special damages estimated in money, although this point was raised before him on the cross-appeal of the defendant. There is no special law in this respect for India, beyond what is contained in the Penal Code, regarding the offence of defamation, and the few reported cases bearing on the point are not altogether consistent.

The point has been very recently discussed in *Parvathi* v. *Mannai* (1) where all these cases have been cited and considered. We concur in the opinion there expressed which is in accordance with the latest decision on the subject in this Court in the case of *Srikant Rai* v. *Satcouri Saha* (2). Although we think that actions for verbal slander should not be encouraged, we find it

(1) I. L. R., 8 Mad., 175. (2) 3 C. L. R., 181.

impossible to hold, having regard to the customs amongst Hindus, that on the facts found by the lower Appellate Court, plaintiff has not suffered seriously from the slander of the defendant inasmuch as his social position has been materially affected by the suspicion cast upon him, and his priest has refused to perform the usual rites and ceremonies for him.

1885

TRAILOKYA NATH GHOSE v. CHUNDRA NATH DUTT.

The damages awarded are moderate. The appeal is, therefore, dismissed with costs.

J. V. W. *Appeal dismissed.*

CRIMINAL REVISION.

Before Mr. Justice Mitter and Mr. Justice Agnew.

IN THE MATTER OF THE PETITION OF BHOLA NATH DAS.*

1885 *December 4.*

Police Act (V of 1861), s. 29—Police constable—"Neglect of duty"—"Lawful order"—Extra drill.

A District Superintendent of Police directed his constables to cut down the jungle in the vicinity of their lines, and on their refusal to comply ordered them extra drill every day. One of such constables not turning out to such extra drill was thereupon prosecuted and convicted of neglect of duty under s. 29, Act V of 1861.

Held, that s. 29 provided for no such offence, and that any neglect of duty short of a violation of duty does not amount to an offence under that section.

Held, further, that the omission to attend such extra drill did not amount to an offence under that section, as the words "lawful order" used in the section mean an order which the authority mentioned therein is competent to make, and it did not appear that a District Superintendent of Police was competent to order his constables to cut down the jungle in the vicinity of their lines and, on their refusal to do so, to order them extra drill.

IN this case the accused, who was a constable in the Goalpara Police Force, was charged with neglect of duty under s. 29, Act V of 1861.

It appeared from the statement of the complainant, who was an inspector, that the District Superintendent of Police had recently ordered his men to cut down the jungle in the vicinity

* Criminal Revision No. 302 of 1885, against the order of Lieutenant-Colonel T. B. Michell, Deputy Commissioner of Goalpara, dated the 6th of July 1885.