they re-appeared, yet as they have not proved that they did so more than twelve years before the institution of the suit, they have acquired no statutory title to them, and their plea of limitation on this ground also fails.

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For these reasons we dismiss this appeal with costs.

S. C. G. *Appeal dismissed.*

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Rampini.

AUGADA RAM SHAHA AND ANOTHER (PLAINTIFFS) v. NEMAI CHAND SHAHA (DEFENDANT No. 1).*

1896 *June* 29.

Defamation—Libel in judicial proceeding—Privilege—Liability for damages in a civil action.

A defamatory statement made in the pleadings in an action is not absolutely privileged.

Nathji Muleshvar v. *Lalbhai Ravidat* (1) dissented from.

THE plaintiffs, Augada Ram Shaha and others, brought a suit against the defendants, Nemai Chand Shaha and others, in the Court of the Munsif of Netrakona, for damages for defamation on the allegation that the defendants in a suit for recovery of money against the plaintiff No. 2, Brojo Mohun Shaha, designated him therein as Brojo Mohun Sho, and subsequently they informed the co-villagers and acquaintances of the plaintiffs that they were *Shos* of a very low class; that the term *Sho* applied to persons who were slaves of *Shahas*; and that the defendants designated them as such for the purpose of disgracing them in society. The defendant, Nemai Chand Shaha, contended that the plaintiffs had no cause of action, as he designated the plaintiff No. 2 as *Sho* in good faith and without any malice; that the suit was bad for misjoinder of parties; and that the plaintiffs were *Shos* and not *Shahas*. The Court of first instance gave the plaintiffs a decree for one anna. On appeal to the learned District Judge, he dismissed it with costs. The defendant appealed to the High Court, and the Bench, presided over by Mr. Justice Hill, decreed

* Letters Patent Appeal, in appeal from Appellate Decree No. 331 of 1895, against the decree of Mr. Justice Hill, reversing the decree of F. H. Harding Esq., District Judge of Mymensingh, dated the 5th of November 1894, as well as the decree of Babu Purna Chunder Mittra, Munsif of Netrakona, dated 28th December 1893.

(1) I. L. R., 14 Bom., 97.

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the said appeal. The material portion of his Lordship's judgment was as follows :—

"In this Court it is contended that no action will lie for defamatory statements made in the pleadings by the parties to a suit, even though they be false and malicious, and that on this ground the Courts below ought to have dismissed the suit. The point was raised in the lower Appellate Court, but the learned Judge refused to entertain it, because it was not referred to by the appellants' pleader, until he came to reply to the pleader for the respondent. Whether the learned Judge was right in this course, having regard to the nature of the objection, may be open to question. But at all events it appears to me it is competent to the appellants to take it here, and no objection has been raised to their doing so by the other side. The learned Judge has, however, while declining to allow the appellants to avail themselves of the point, expressed his opinion upon it at some length, following apparently the case of *Abdul Hakim* v. *Tej Chandar Mukarji* (1). He states his view of the law as follows :—'It appears to me to be sufficient to give to parties the qualified privilege of persons acting in good faith, and making communications with the fair and reasonable purpose of protecting their own interests.' If the case of *Abdul Hakim* v. *Tej Chandar Mukarji* (1) correctly lays down the law of this country, this statement would not be open to exception. But the case is in conflict with the recent decision of the Bombay High Court in *Nathji Muleshvar* v. *Lalbhai Ravidat* (2), which does not, however, appear to have been brought to the notice of the learned Judge, as well as what was said in the case of *Hinde* v. *Baudry* (3) by the Madras High Court touching the liability of parties to judicial proceedings in respect of defamatory statements. The weight of authority, therefore, appears to be in favour of the absolute privilege accorded to such statements in the English cases, and the reasoning of the learned Chief Justice in the case of *Nathji Muleshvar* v. *Lalbhai Ravidat* (2) commends itself to me, rather than that employed by the learned Judges who decided *Abdul Hakim* v. *Tej Chandar Mukarji* (1), and I think, I ought to follow it. I accordingly decree the appeal, and, setting aside the decrees of the Courts below, dismiss the suit with costs in all Courts."

Against this judgment the plaintiffs appealed under section 15 of the Letters Patent.

Babu *Dwarkanath Chuckerbutty* for the appellant.—Upon the facts found the appellant is entitled to a decree, unless a libel in pleading is absolutely privileged. I submit there is no such

(1) I. L. R., 3 All., 815.
(2) I. L. R., 14 Bom., 97.
(3) I. L. R., 2 Mad., 13.

absolute privilege. The Indian Penal Code recognizes only the qualified privilege of good faith. The English law gives absolute privilege, which extends both to criminal and civil liability. There is this difference between the English and the Indian Law. If there is a criminal liability, why should not there be a civil liability also? No doubt the cases on this point in India are conflicting. There is no case of this Court directly in point. The Madras High Court in the case of *Hinde* v. *Baudry* (1) held that the defendants in that case were not in a position which would afford absolute protection, but they were so placed as to entitle them to the qualified privilege of persons acting in good faith. In that case the petition presented by the defendants only pointed out what they considered suspicious elements in the plaintiff's claim against an absconded debtor, and the learned Judges held that the defendants were entitled to the qualified privilege. The rest of the decision was mere *obiter dictum*. In the case of *Abdul Hakim* v. *Tej Chandar Mukarji* (2) it was held that defamatory statements are not privileged, merely because they are used in a petition put in in a judicial proceeding. This case is exactly in point. The Bombay High Court in the case of *Nathji Muleshvar* v. *Lalbhai Ravidat* (3) has no doubt held, following the principles of English law, that no action for slander would lie for any statement in the pleadings, or during the conduct of a suit, against a party or a witness in it. But the principles of English law should not be applied to cases in India, having reference to the state of society and condition of things in this country. Where there is substantive law, we ought to look to that by which suits like the present should be regulated. The only privilege provided for in the exceptions of section 499 of the Indian Penal Code is good faith. In that case it is no defamation at all: See *Queen* v. *Pursoram Doss* (4). The criminal law in this country with regard to defamation depends on the construction of section 499 of the Indian Penal Code, and not what may be the English law on the subject: See *Greene* v. *Delauney* (5).

In the case of *Gunnesh Dutt Singh* v. *Mugneeram Chowdhry* (6)

(1) I. L. R., 2 Mad., 13. (2) I. L. R., 3 All., 815.
(3) I. L. R., 14 Bom., 97. (4) 3 W. R., Cr., 45.
(5) 14 W. R., Cr., 27. (6) 11 B. L. R. (P. C.), 321, 328.

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their Lordships of the Privy Council held, with respect to witnesses, that they could not be sued for damages for evidence given by them in a judicial proceeding; but this did not lay down that the same absolute privilege existed in this country as in England. Mr. Justice Rampini in his book on Torts, at p. 257, says, whether in India absolute privilege extends beyond witnesses, is doubtful.

Mr. *Caspersz* (Babu *Hari Mohun Chuckerbutty* with him) for the respondent.—The plaintiff in this case had two remedies: he could either sue the defendant for defamation, or he could, in the suit brought in the Small Cause Court, ask the libellous words to be expunged from the plaint. He did neither. No suit for damages is maintainable for a statement made in the pleadings even if it is libellous: See *Nathji Muleshvar* v. *Lalbhai Ravidat* (1), *Seaman* v. *Netherclift* (2). In the case of *Gunnesh Dutt Singh* v. *Mugneeram Chowdhry* (3) their Lordships of the Privy Council held, that witnesses are absolutely privileged, and the rule of privilege, as regards witnesses, at all events, has properly been applied in India. The same ground of public policy which applies to witnesses should apply in the cases of parties to a suit. It has been held in the case of *Astley* v. *Younge* (4) that an action for libellous words spoken or sworn in a Court of Justice in a man's own defence against a charge upon him in that Court, will not lie. The case of *Hinde* v. *Baudry* (5) distinctly shows that the Madras Court was disposed to follow the rule of English law.

The cases in 3 W. R. and 14 W. R. are criminal cases; therefore they have no bearing on the present case. The learned Judges of the Allahabad High Court, in the case of *Abdul Hakim* v. *Tej Chandar Mukarji* (6), did not think it necessary to decide the question whether such a suit would lie; they held, as the statement was made in good faith, therefore the defendants were privileged. Whatever they said in that case was mere *obiter dicta*.

Babu *Dwarkanath Chuckerbutty* in reply.

(1) I. L. R., 14 Bom., 97.
(2) L. R., 1 C. P. D., 540.
(3) 11 B. L. R. (P. C.), 321, 328.
(4) 2 Bur., 807.
(5) I. L. R., 2 Mad., 13.
(6) I L. R., 3 All., 815.

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The judgment of the High Court (PETHERAM, C.J., and RAMPINI, J.) was as follows :—

The question we have to consider is, whether a statement made in the pleadings in an action, and which effects the caste of the person of whom it is made, is absolutely privileged in accordance with the rule of the English Common law, or whether it is subject only to the Indian Statute law which relates to defamation. The decisions of the various Courts in India on the point have not been uniform. The High Court of Bombay, in the case of *Nathji Muleshvar* v. *Lalbhai Ravidat* (1), has held that the privilege is absolute ; that of Allahabad, in *Abdul Hakim* v. *Tej Chandar Mukarji* (2), that it is not ; while that of Madras, though it has never decided the question judicially, would seem to agree with the High Court of Bombay : See *Hinde* v. *Baudry* (3). The point does not appear to have ever come before this Court in a civil suit ; but it has twice decided that, in such a case, the only privilege in a criminal proceeding is that provided by the exceptions to section 499 of the Indian Penal Code : See *Queen* v. *Pursoram Doss* (4), *Greene* v. *Delauney* (5). These rulings are, we think, binding upon us, as we do not think it possible that a statement may be the subject of a criminal prosecution for defamation, and at the same time may be absolutely privileged, as far as the Civil Courts are concerned. But if there had been no authority on the point in this Court, we should have come to the same conclusion.

It is, we think, very doubtful whether any remedy for defamation was known to the Indian law before the passing of the Indian Penal Code in 1860. *Cap.* 21 of that Code created and defined the offence of defamation, and by section 499 the publication of words which lower the character of a person in respect of his caste, is defamation, and subjects the publisher to punishment, unless it can be brought within one of the ten exceptions to the section. In making it criminal to defame another, the Legislature certainly made it illegal, and so made it a cause of action, if the person defamed was injured.

If the publication is within any one of the exceptions, it

(1) I. L. R., 14 Bom., 97.
(2) I. L. R., 3 All., 815.
(3) I. L. R., 2 Mad., 13.
(4) 3 W. R., Cr., 45.
(5) 14 W. R., Cr., 27.

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is not defamation at all, and is neither an offence, nor illegal under the Code; but, if it is defamation, nothing but one or other of the reasons mentioned in the exceptions can prevent the publication from being criminal and consequently illegal. There is nothing in any one of the exceptions which can be strained so as to include any statement, whether relevant or not, which may be inserted in a plaint or written statement, or application to a Court, though it may well be that a statement which is essential to the cause of action, or to the defence, is protected by the 9th exception; but that exception cannot help the defendant in the present case, as the statement here complained of is not material to the cause of action in any way, and is, if untrue, a mere gratuitous insult.

In the case of *Gonesh Dutt Singh* v. *Mugneeram Chowdhry* (1) the Judicial Committee said that they agreed with the High 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. And they stated the reason to be 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 they should incur, if they give evidence falsely, should be an indictment for perjury. This *dictum* is said to establish the proposition that the same absolute privileges exist in this country as in England, and that, as the pleadings in an action would be absolutely privileged in England, they must be so here. We do not think the *dictum* establishes anything of the kind. The Judicial Committee, in the course of their remarks, do not mention the Penal Code; but it does not follow from that, that it was not present to their minds, and it may quite well be that the *dictum* in question was founded on the 9th exception to section 499, as the evidence given by a witness on oath would certainly be within that exception, whenever his statement was relevant to the question in issue.

But however this may have been, it is evident that the reason given by the Judicial Committee for saying that a suit cannot be maintained against a witness cannot apply to an irrelevant

(1) 11 B. L. R. (P. C.), 321, 328.

defamatory statement in a pleading, and, therefore, the *dictum* cannot compel us to hold that such a publication is absolutely protected. We think the learned Judge of this Court was wrong in thinking that such an action could, under no circumstances, be maintained, and the result will be that the appeal will be allowed, and the judgment of the District Judge restored with costs of both the hearings in this Court.

S. C. G. *Appeal allowed.*

Before Mr. Justice Ghose and Mr. Justice Gordon.

RAJKESHWAR DEO AND ANOTHER (JUDGMENT-DEBTORS) *v.* BUNSHIDHUR MARWARI, A MINOR, BY HIS GUARDIAN MOHOORI DASSI (DECREE-HOLDER).* 1896 *June* 10.

Ghatwali tenure—Decree, Execution of—Rents due to ghatwal during his lifetime—Attachment.

After deduction of all necessary outgoings from the total rents due to a *ghatwal*, the residue, being his own absolute property, may be attached in execution of a personal decree against him.

Bally Dobey v. *Ganei Deo* (1) distinguished; *Kustoora Kumari* v. *Benoderam Sen* (2) approved.

THE plaintiff had obtained a decree against the first defendant, a *ghatwal*. In execution of the decree, the plaintiff sought to attach so much of the rents due to the defendant as would remain after payment of Government revenue, wages of chowkidars, and other necessary outgoings. The Subordinate Judge made the order asked for, which was confirmed on appeal to the District Judge. The defendant appealed to the High Court.

Babu *Srinath Dass* and Babu *Jogesh Chunder Dey* for the appellant.—Inasmuch as the *ghatwal* holds the estate in return for certain services, it is inalienable, and necessarily the rents due to him are also inalienable; and therefore the order of the lower

* Appeal from Order No. 370 of 1895, against the order of J. H. Bernard, Esq., District Judge and Deputy Commissioner of the Sonthal Pergunnahs, dated the 7th of September 1895, affirming the order of H. H. Heard, Esq., Sub-Divisional Officer of Deoghur, dated the 27th of June 1895.

(1) I. L. R., 9 Calc., 388. (2) 4 W. R., Misc. Rul., 5.