FULL BENCH.

1917
December, 15.

Before Justice Sir George Knox; Justice Sir Pramada Charan Banerji; Mr. Justice Tudball, Mr. Justice Muhammad Rafiq and Mr. Justice Walsh.

CHUNNI LAL (DEFENDANT) *v.* NARSINGH DAS (PLAINTIFF).*

Defamation—Libel—Privilege—Civil liability of petitioner for statement made by him in a petition presented to a criminal court.

A person presenting a petition to a criminal court is not liable in a civil suit for damages in respect of statements made therein which may be defamatory of the person complained against.

In the absence of Statute law in India a regarding civil liability for libel, there is no reason why the English law applicable thereto should not be followed, according to the ruling of the Privy Council in *Waghela Rajsanji* v. *Shekh Masluddin* (1). *Abdul Hakim* v. *Tej Chandar Mukarji* (2) overruled. *Augada Ram Shaha* v. *Nemai Chand Shaha* (3) dissented from.

THE facts of this case were as follows:—

Chunni Lal, the defendant appellant, was being prosecuted for an offence under section 193 of the Indian Penal Code, and he had engaged the plaintiff respondent, who was a pleader, to defend him. For a time Chunni Lal was allowed to remain at large on his own recognizances. On the 22nd of August, 1913, however, he was ordered to find a surety in the sum of one hundred rupees. The plaintiff agreed to stand surety and executed a bail bond. But to make his position quite secure, he asked his client to pay him Rs. 100, which Chunni Lal did. The pleader thereupon applied to be permitted to deposit the one hundred rupees in cash. The Deputy Magistrate being in camp, the pleader was ordered to deposit the money in the Shikohabad Sub-Treasury. The plaintiff did so, but by some mistake the proper number of receipts was not granted. On the 4th of September, 1913, the case under section 193, Indian Penal Code, was taken up. Chunni Lal engaged another pleader and was acquitted. On the 17th of September, 1913, Chunni Lal put in a petition in the Deputy Magistrate's court stating that, as no intimation had been received by the court about the deposit of the hundred rupees, he was not sure that the money had been deposited at all, and

* Second Appeal No. 1473 of 1915 from a decree of L. Marshall, District Judge of Mainpuri, dated the 30th of June, 1915, confirming a decree of Prem Behari, Munsif of Mainpuri, dated the 10th of August, 1914.

(1) (1887) L. R., 14 I. A., 89. (2) (1881) I. L. R., 3 All., 815.

(3) (1896) I. L. R., 23 Calc., 867.

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praying that inquiry be made from the Tahsildar of Shikohabad. Subsequently Chunni Lal saw the District Magistrate and complained orally. The District Magistrate told him to file a complaint. On the 24th of September, 1913, Chunni Lal filed a regular complaint against the pleader, Chaube Narsingh Das, charging him with offences under sections 420 and 409 of the Indian Penal Code (cheating and criminal breach of trust). In the mean time, on the 22nd of September, 1913, a reply was received in the Deputy Magistrate's court from the Tahsildar of Shikohabad to the effect that the money had been deposited by pleader on the 22nd of August, 1913. Chunni Lal, before filing the complaint, did not take the precaution of inquiring from the Deputy Magistrate's court whether any reply had been received from the Tahsildar of Shikohabad. The District Magistrate, without issuing process to Chaube Narsingh Das, held a preliminary inquiry into Chunni Lal's complaint under sections 420 and 409 of the Indian Penal Code, and dismissed it under section 203 of the Code of Criminal Procedure. Chaube Narsingh Das then brought a complaint charging Chunni Lal with defamation, under section 499 of the Indian Penal Code in respect of the statements made by the latter in his petition or complaint dated the 24th of September, 1913. The District Magistrate dismissed Narsingh Das' complaint, holding that the ninth exception to section 499 of the Penal Code covered the case. Narsingh Das applied in revision to the Sessions Judge, who was of opinion that the order dismissing the complaint was wrong and referred the case to the High Court. The High Court (RAFIQ and PIGGOTT, JJ.), however, did not agree with the Sessions Judge. The pleader, Chaube Narsingh Das, then brought the present civil action claiming Rs. 1,000 as damages for libel in respect of the statements made by Chunni Lal in his petition of complaint dated the 24th of September, 1913. The court below gave the plaintiff a decree for Rs. 200. The defendant appealed to the High Court.

Babu *Piari Lal Banerji*, for the appellant:—

The statements complained of are defamatory, but it is submitted that they are absolutely privileged. Because a man may be criminally liable, is he necessarily liable for damages in

a civil action too'? In England, he will not be liable in a civil action; absolute privilege will be allowed to him. There is no reason why the law should be different in India.

The difference in this particular instance between the criminal laws of India and England has no effect. Because a man is criminally liable he is not necessarily liable civilly also. Let us take for example, the defence of truth In England under the Libel Act—as well as in India under the Penal Code—truth in criminal proceedings is a defence only under certain circumstances and within certain well-known limitations. But in a civil action it is complete defence. So, the defence of absolute privilege may or may not be a good defence in criminal proceedings, but as it is a good defence in civil actions in England, it should be so in India too. The fact of a man being criminally liable for a certain act is no test or criterion for determining his liability in a civil action for damages for that act.

The English Law on the subject is to be found in Pollock. *Law of Torts*, 6th Edition, pp. 254 and 257 ; Halsbury's *Laws of England*, Vol. 18, pp. 678 and 738.

The following are the leading English cases on the subject :—

Munster v. *Lamb* (1). This was a case of a counsel being sued for defamation. The judgements of BRETT, M. R. and FRY, L. J., are very clear and instructive. This case shows that there is no difference between a witness and a party.

Revis v. *Smith* (2). This was a case of a witness making statements in an affidavit In principle there is no difference between this and the case of a party filing a complaint. The case just cited does away with the supposed distinction between *viva voce* statements and those made deliberately.

Henderson v. *Broomhead* (3). This was a case of a party making statements in an affidavit.

Watson v. *McEwan* (4) ; *Hodson* v. *Pare* (5). This was a case of a petition instituting proceedings like the present.

Bottomley v. *Brougham* (6), *Lilley* v. *Roney* (7), *Dawkins* v. *Lord Rokeby* (8), *Seaman* v. *Netherclift* (9).

(1) (1883) 11 Q. B. D., 588.
(2) (1856) 18 C. B., 126.
(3) (1859) 4 H. and N., 569.
(4) (1905) A. C., 480.
(5) (1899) 1 Q, B., 455.
(6) (1908) 1 K. B., 584.
(7) (1892) 61 L. J., Q. B., 727.
(8) (1875) L. R., 7 H. L., 744.
(9) (1876) 2 C. P. D., 53.

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Here a witness persisted in making *voluntary* statements, in spite of the fact that the Judge had told him not to make any statement, and refused to listen to him, and had practically discharged the witness. Yet it was held that the man was privileged. It is thus settled that, in England, judge, counsel, witness and party all stand on the same footing. And it is submitted, that the same privilege should be accorded in India too As to the Indian authorities, the first case is that of *Baboo Gunnesh Dutt Singh* v. *Mugneeram Chowdhry* (1). The observations relating to the privilege of witnesses in their Lordships' judgement at p. 328 are not *obiter*. Even if they were so, they are entitled to great respect, and no Civil Court can refuse to follow them. In a criminal case it may be different. The case just cited also shows that in actions for malicious prosecution, the tests of the Indian Penal Code are not applied, although a remedy by criminal proceedings under section 211 of the Penal Code is also open. The first case in this Court is that of *Chowdhry Goordutt Singh* v. *Gopal Dass* (2). It is not of much help, for it held that the proceedings were not judicial. The next case is that of *Tulshi Ram* v. *Harbans* (3). It is in my favour, although it accords to witnesses a sort of a limited privilege only. The next case is that of *Abdul Hakim* v. *Tej Chandar Mukarji* (4). This is the only case which is really in favour of the plaintiff. But it has not been followed in a large number of cases. Even Subordinate Courts have refused to follow it and this Court has not censured them. The observations which help the plaintiff are entirely *obiter dicta*. The principle on which they are based is that to determine liability in civil actions also we must go to the Indian Penal Code for guidance. This is not warranted. There is no reason why the principles and tests of the Indian Penal Code should be introduced into a civil action for damages for defamation, especially when the Indian Penal Code is not imported for guidance in any other form of civil action where a criminal remedy is also open, e.g., malicious prosecution. The next case is that of *Dawan Singh* v. *Mahip Singh* (5). It has

(1) (1872) 11 B. L. R., 321.
(2) N.-W. P., H. C. Rep., 1866, p. 33.
(3) Weekly Notes, 1885, p. 301.
(4) (1881) I. L. R., 3 All., 815.
(5) (1888) I. L. R., 10 All., 425.

been supposed by some that MAHMOOD J. has in this case expressed himself as against the view now contended for by me. But that is not so. He only refused to follow the English law of slander, which is highly artificial. But the learned Judge does not refuse to follow the English law as to the absolute privilege of a witness The judgement has been misunderstood. As a matter of fact, he goes the whole length with BRODHURST, J., so far as the question of the privilege of a witness is concerned. So that as early as 10 Allahabad, the authority of 3 All., 815, (*Abdul Hakim* v. *Tej Chandar Mukarji*) had been shaken. The next case is that of *Emperor* v. *Ganga Prasad* (1). There the question was as to the *criminal* liability of a witness who makes defamatory statements whilst giving evidence. Even on that point RICHARDS, J., differed from KNOX, J. The ruling must be considered to be limited to criminal cases, and is therefore distinguishable. The principal judgement was that of KNOX, J., and he is careful to employ language which cannot be extended to civil actions. The next case is that of *Babu Prasad* v. *Muda Mal* (2). The case helps me inferentially. The case in 3 All., 815, was not cited nor were the lower courts censured for not following it. It cannot be argued that the cases in 3 All., 815, and 11 A. L. J., 193, are consistent. Such being the state of the authorities in this Court, it cannot be urged by the other side that acceptance of my arguments would disturb any current of decision. My contention that in a civil action for damages for libel, the tests of the Indian Penal Code cannot be applied derives support from the fact that in the well-known Benares caste case, *Bishambhar Das* v. *Gobind Das* (3), the High Court did not refer to the Penal Code for guidance, nor did the Privy Council. See *Gobind Das* v. *Bishambhar Das* (4). There is great conflict in the Calcutta Court, but the later rulings are in my favour. Omitting the earlier cases, the first case is *Bhikumber Singh* v. *Becharam Sircar* (5) which favours the appellant. The case of *Augada Ram Shaha* v. *Nemai Chand Shaha* (6) is against me. But the reasoning in this case is unsound and incorrect. The opinion that "we do not think it possible that a

(1) (1907) I. L. R., 29 All., 685.
(2) (1913) 11 A. L. J., 193.
(3) (1914) 12 A. L. J., 552.
(4) (1917) I. L. R., 39 All., 561.
(5) (1888) I. L. R., 15 Calc., 264.
(6) (1895) I. L. R., 23 Calc., 867.

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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," is too widely stated. The case has been followed up to a certain stage, but later on the tendency has been to ignore it. The case of *Kali Nath Gupta* v. *Gobinda Chandra Basu* (1) was a criminal case. Besides, it simply follows the case in 23 Calc., 867. The distinction drawn between a witness and a party is obviously erroneous. The Judges base the privilege of a witness on section 132 of the Indian Evidence Act, and the obligation that lies on a witness to answer all questions put to him. But it has been held that the privilege of a witness is much wider, i.e., it extends even to voluntary, absolutely irrelevant and obviously malicious statements. The case of *H. P. Sandyal* v. *Bhaba Sundari Debi*, (2) is also against me. But that also simply follows the case in 23 Calc., 867. One of the learned Judges, however, does not do so without reluctance. This is the last case which recognizes the authority of 23 Calc., 867. The cases of *Kori Sing* v. *The King-Emperor* (3) and *Kori Singh* v. *Mr. J. Finch* (4) were criminal cases and are of no help. The first one, however, shows that there is a difference between a criminal case and a civil action. The case of *Golap Jan* v. *Bholanath Khettry* (5) is entirely in my favour. In the case of *C. H. Crowdy* v. *L. O. Reilly*, (6) MOOKERJI, J., cites the American cases on the subject. In all systems of civilised jurisprudence absolute privilege, as contended for here, has been allowed. The leading case in the Madras Court is that of *In re P. Venkata Reddy* (7), in which all the Madras authorities on the subject are collected. The case of *Re Muthusami Naidu* (8) is also in my favour. They are both criminal cases, and the Madras Court has extended the principle of absolute privilege even to criminal cases. The Bombay case of *Nathji Muleshvar* v. *Lalbhai Ravidat* (9) is entirely in my favour. The case of *Queen-Empress* v. *Babaji* (10)

(1) (1900) 5 C. W. N., 293.
(2) (1910) 15 C. W. N., 995.
(3) (1912) 17 C. W. N., 297.
(4) (1912) 17 C. W. N., 449.
(5) (1911) I. L. R., 38 Calc., 880.
(6) (1912) 17 C. W. N., 554.
(7) (1911) I. L. R., 36 Mad., 216.
(8) (1912) I. L. R., 37 Mad., 110.
(9) (1889) I. L. R., 14 Bom., 97.
(10) (1892) I. L. R., 17 Bom., 127.

shows that the Bombay Court too has extended the doctrine of absolute privilege to criminal cases also.

The Punjab cases of *Ali Khan* v. *Malik Yaran Khan* (1) and *Kundan* v. *Ramji Das* (2) are in my favour. The case of *Fateh Muhammad* v. *The Empress* (3) was a criminal case and has no application to the present case. It is on the same footing as the case in I. L. R., 29 All., 685. Thus, apart from English cases, the balance of authority in India too, I submit, is in my favour, and the recent cases of all the High Courts support me.

Sir *Sundar Lal*, for the respondent:—

The question is whether a person filing a complaint, however groundless, malicious and false, is entitled to the protection of absolute privilege on the ground of any public policy. Under section 37 of the Bengal, N.-W. P. and Assam Civil Courts Act, (Act XII of 1887), whenever there is no statute law, courts in India have to act according to justice, equity and good conscience. This being a civil suit for damages for defamation, for which there is no statute law, the question is whether it is in accordance with justice, equity and good conscience to hold in India, following English case-law, that a statement of the kind we are considering in this case is protected. It may be protected in England. But the question is whether the English Law should be followed in India. The facts found in the present case clearly show that the statements made by Chunni Lal in his petition of complaint, especially the one to the effect that the pleader had pocketed the money, were most reckless and made without due care and caution. Is such a man entitled to the protection of absolute privilege? For the purpose of deciding this question, the matter to consider is how far has the wide doctrine of absolute privilege to be found in English Law been followed in India and how far should it be followed by this Court.

So far as Indian Law is concerned, the Indian Penal Code has not accepted the wide principle of English Law. Section 499 of the Code gives only a qualified privilege. Thus, so far as criminal matters are concerned, we have a law enacted by the Indian Legislature which does not accept the English Law in its entirety. Why should we not go to it for guidance, rather than to English

(1) Punj. Rec., 1879, p 28. (2) Punj, Rec., 1879, p 421.

(3) Punj. Rec., 1889, p. 129.

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law, in order to find out what is in accordance with justice, equity and good conscience ? The rule of English law is based on the theory that parties and witnesses must be absolutely unfettered and without fear of civil and criminal liability of any kind. In India, as section 499 of the Penal Code gives only a qualified privilege, parties and witnesses have to be in fear of at least one form of liability, *viz:* criminal, which is the more serious of the two. Thus the whole reason of the English rule disappears so far as this country is concerned. If such persons are liable criminally, there is no reason why they should be protected when a civil action is brought against them. The Indian Legislature has thought it necessary to pass Act XVIII of 1850. If the rule of English law were applicable to this country in its entirety, judicial officers would have been amply protected by it and there would have been no need for this enactment. Then again, there is section 132 of the Indian Evidence Act. That also militates against the view that the English Common Law on the subject is applicable to this country. The question in this country has to be considered not in the light of case-law but in that of principle and legislation so far as it has proceeded in this country.

Mr. *A. P. Dube*, followed on the same side :—

The rule of English Law, giving absolute privilege, is a rule of adjective law. It takes away jurisdiction ; *Bottomley* v. *Brougham* (1). Therefore, unless it can be held that there is something in the adjective law of India which takes away the jurisdiction of the courts in such matters, the rule of English Law is of no assistance.

The case just cited clearly explains that the doctrine of absolute privilege means that the courts are precluded from inquiring into such matters. It cannot be denied that the present action is a suit of a civil nature, and there is nothing in the law of India which expressly or impliedly bars its cognizance by the courts. Under section 9 of the Code of Civil Procedure, therefore, the plaintiff is entitled to have his suit tried, and the English law has no application. It has been admitted even by writers of text-books on English law that the protection created by the English law for

(1) (1908) 1 K. B., 584.

the sake of honest litigants and persons might also protect dishonest and malicious persons. It is for this Court to consider whether it is not possible to give in this country only a qualified privilege which will protect only honest and innocent persons. In England the rule had its origin in a feeling that the conduct of judges and advocates should not be made the subject of an inquiry by a jury. It has been extended to other persons engaged in judicial proceedings, *e. g.*, witnesses, parties and jurors. No such considerations arise here. Besides, there are some very important differences between Indian and English society which are clearly explained by SPENCER, J., in 36 Mad., 216. The weight of authority in India is in favour of giving only a qualified privilege. He cited and discussed the following cases:—*Gobindhi* v. *Jodha Bali* (1), *Abdul Hakim* v. *Tej Chandar Mukarji* (2), *Dawan Singh* v. *Mahip Singh* (3) (at page 450, judgement of Mahmood, J.), *Babu Mal* v. *Muda Mal* (4), *Bishambhar Das* v. *Gobind Das* (5), *Queen* v. *Pursoram Doss*, (6), *Shibnath Tulaputtro* v. *Sat Cowree Deb* (7), *Bhikumber Singh* v. *Becha Ram Sircar* (8), *Augada Ram Shaha* v. *Nemai Chand Shaha* (9), *Kari Singh* v. *Emperor* (10), *In re Nagarji Trikamji* (11) and *Sullivan* v. *Norton* (12).

Babu *Piari Lal Banerji*, was not called upon to reply, but cited *Varden Seth Sam* v. *Luckpathy Royjee Lallah* (13) and *Wajeda Rajsanji* v. *Shekh Masluddin* (14).

KNOX, BANERJI, TUDBALL, MUHAMMAD RAFIQ and WALSH, JJ.:—This second appeal arises out of a civil action for damages for defamation, the facts of which are briefly as follows:—

The defendant, who is the appellant before us, was prosecuted in a Criminal Court for an offence under section 193 of the Indian Penal Code. The plaintiff, who is a pleader, appeared to defend him. The court allowed bail and the plaintiff stood surety for the

(1) Weekly Notes, 1885, p. 204.
(2) (1881) I. L. R., 3 All., 815.
(3) (1888) I. L. R., 10 All., 425 (450).
(4) (1913) 11 A. L. J., 193.
(5) (1914) 12 A. L. J., 552.
(6) (1865) 3 W. R., C. R., 45.
(7) (1865) 3 W. R., C. R, 198.
(8) (1888) I. L. R., 15 Calc., 264.
(9) (1896) I. L. R., 23 Calc., 867.
(10) (1912) I. L. R., 40 Calc., 433.
(11) (1894) I. L. R., 19 Bom., 340.
(12) (1886) I. L. R., 10 Mad., 28.
(13) (1862) 9 Moo. I. A., 303.
(14) (1887) L. R., 14 I. A., 89.

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defendant to the extent of Rs. 100. Not being sure of his client, however, he asked the Court to allow Rs. 100 to be deposited in cash. The prayer was granted. The defendant produced the cash, giving it to the plaintiff, and it was actually deposited on the same date, the 22nd of August, 1913, in the Sub-Treasury at Shikohabad. There was some error in the usual procedure for the depositing of money and the full number of acknowledgements was not issued.

On the 4th of September, 1913, the case was heard and the defendant acquitted. On that date, however, he employed another pleader. On the 17th of September, 1913, he filed a petition stating that no receipt had been issued by the Treasury and he was in doubt as to whether the money had actually been deposited by the plaintiff. He asked for inquiry to be made from the Tahsildar. Inquiry was ordered and made, and on the 22nd of September, 1913, the Court received a reply that the money had actually been deposited on the 22nd of August. Without first inquiring from the court the result of the inquiry ordered, the defendant, on the 24th of September, 1913, filed a written complaint in the court of the District Magistrate charging the plaintiff with having committed the offences of cheating and criminal breach of trust in respect to the sum of Rs. 100.

The District Magistrate issued no process on this complaint, but made a preliminary inquiry and dismissed it on ascertaining the facts as to the deposit. The plaintiff thereupon prosecuted the defendant in a Criminal Court. For reasons with which we are not concerned, the defendant was acquitted.

The plaintiff then filed the suit out of which this appeal has arisen to recover Rs. 1,000 as damages for defamation. The courts below have decreed the claim to the extent of Rs. 200. Hence the present appeal by the defendant.

The plea raised on his behalf is that, in a civil action arising out of facts such as have been found in the present case, the defendant has an absolute privilege and is absolutely protected by the law from a civil action for damages for defamation.

For the plaintiff it is urged that in such a case there is no absolute privilege, but only a qualified privilege, and that as the defendant did not act in good faith, he is not protected. There

being a conflict of rulings on the point, the case has been referred to this Full Bench for decision.

We deem it necessary, in view of certain arguments that have been raised before us in regard to the criminal law of defamation, to emphasize in the forefront of our judgement that we are not here concerned with libel as a criminal offence, but only with the civil wrong and the right to redress in a civil action. The civil and the criminal law and procedure do not in our opinion coincide, but are independent of each other. We may quote as an instance one admitted difference between the civil and the criminal law. In a civil action the plea of mere truth is, if established, a complete defence. In a criminal charge it is not so, for the accused has further to prove the fact that it was for the public good that the imputation was made or published. We therefore restrict ourselves to the civil wrong and the right to redress in a civil action. Next, it is clear (and is also admitted before us) that the English rule of law on the point for decision is well established and beyond discussion, and that under that rule the appellant before us would be absolutely protected. It is unnecessary, therefore, to discuss the English decisions on a principle which has been accepted for generations and has never been questioned in England. It has been recognized by Indian Judges. It had to be conceded before us that the High Courts of Bombay and Madras have applied it without hesitation, and that the latter has even gone to the extent of applying it to criminal cases, on the correctness of which we abstain from expressing any opinion.

There is no Statute in India dealing with civil liability for defamation. We have, therefore, to apply the rule of equity, justice and good conscience. This has been interpreted by the Privy Council in *Waghela Rajsanji* v. *Shekh Masluddin* (1) to mean the rules of English Law if found applicable to Indian society and circumstances. On behalf of the plaintiff respondent it is urged that in the present instance the rule of English law is inapplicable to the circumstances of this country, and that, whatever may have been the rule applied prior to 1860, the Legislature in introducing the Penal Code in that year did not apply the rule of English Law to criminal cases and may be said, by

(1) (1887) L. R. 14 I. A., 89; I. L. R., 11 Bom., 551.

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implication, to have amended the civil law. Reliance has been placed on the decision of the Calcutta High Court in *Augada Ram Shaha* v. *Nemai Chand Shaha* (1) and on the *dictum* in *Abdul Hakim* v. *Tej Chandar Mukarji* (2).

Reference has also been made to several decisions in criminal cases; but we decline to discuss them, for the reasons already given. In regard to the first part of the argument the learned advocate for the respondent has failed to show us what there is in the circumstances and society of this country that would make it improper or inadvisable to apply the English rule. It is suggested that the mass of the population is uneducated and more impulsive and sensitive and therefore more likely to take the law into its own hands if it cannot get redress for defamation, and that therefore it would not be sound public policy to enforce the English rule. We do not think that these are weighty reasons. The English Law does not seek to protect dishonest parties, witnesses or advocates; but deems it a lesser evil that they should escape than that the great majority of honest parties, witnesses and advocates should be exposed to vexatious actions. Unless it can be said that the great majority of these classes in India is dishonest, there can be no good reason against applying the same rule in this country. Needless to say this has not been urged before us, and in this instance we consider that what is sound public policy in England is equally sound policy in India and that the rule of English Law is in accordance with the principles of justice, equity and good conscience.

The *dictum* of the Privy Council in the case of *Gunnesh Dutt Singh* v. *Mugneeram Chowdhry* (3) supports us; that in 3 All., 815, is based on vague and indefinite grounds.

We cannot agree with the decision of the Calcutta High Court in *Augada Ram Shaha* v. *Nemai Chand Shaha* (4). It appears to be based upon the assumption that there was no law of defamation in India before the Penal Code. This is not the case, for there are reported decisions on the subject in this province as far back as 1852. Moreover, the learned Judges applied the test of the Criminal Law to the Civil Law, whereas we hold that the two are independent of each other.

(1) (1896) 1 L. R., 23 Calc., 867.
(2) (1881) I. L. R., 3 All., 815.
(3) (1872) 11 B. L. R., 321.
(4) (1896) I. L. R., 23 Calc., 867.

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Lastly, the plea that a criminal enactment can be interpreted as amending the civil law by implication stands unsupported. It may be anomalous that a party should be criminally punishable and yet be not civilly liable in a case like the present, but it is not the only anomaly in this branch of the law.

We therefore hold that defamatory words used on such an occasion as is alleged by the plaintiff in this suit are not actionable, on the ground of absolute privilege, and that the present suit fails.

We allow this appeal, set aside the decrees of the court below and dismiss the suit. In view of the circumstances of the case the parties will abide their own costs throughout.

Appeal allowed.

STAMP REFERENCE.

Before Mr. Justice Tudball.

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January, 26.

ABINASH CHANDRA (PLAINTIFF) *v.* SHEKHAR CHAND AND OTHERS (DEFENDANTS).*

Act No. VII of 1870 (*Court Fees Act*), *section* 7, *vi—Suit for pre-emption—Suit partly decreed and partly dismissed—Appeal raising questions both as to true price and as to the right to pre-empt—Court fee.*

Five villages were transferred by means of one sale deed, the consideration set forth in the deed being Rs. 44,000. In respect of this transaction a suit for pre-emption was brought; but the plaintiff alleged that the true consideration was Rs. 2,500 only. As to two of the villages the suit was decreed, on payment of Rs. 21,000, which was found to be the proportionate part of the Rs. 44,000 assignable to these villages; as to the other three villages the suit was dismissed. The plaintiff appealed (*a*) as to the price to be paid for the two villages in respect of which the decree was in his favour and (*b*) in respect of the disallowance of his claim to pre-empt the other three villages. A question having arisen as to the proper court fee payable on this appeal, it was *held* that the appeal was divisible into two clear and distinct parts, and that in respect of (*a*) the appellant should pay an *ad valorem* fee on the difference between 21/44 of Rs. 2,500 and Rs. 21,000, while in respect of (*b*) the appellant should pay a court fee calculated according to section 7, vi, of the Court Fees Act, 1870, on five times the Government Revenue of the three villages claimed.

THIS was a question arising out of an appeal in a suit for pre-emption as to the proper court fee payable on the appeal. The facts of the case appear from the following orders by the Court and the officers concerned :—

* Stamp Reference in First Appeal No. 293 of 1916.