Before Mr. Justice Straight and Mr. Justice Tyrrell.

1881
May 20

ABDUL HAKIM (PLAINTIFF) *v.* TEJ CHANDAR MUKARJI (DEFENDANT).*

Defamation—Statements in judicial proceeding—Good faith—Privileged communication.

The law of defamation which should be applied in suits in India for defamation is that laid down in the Indian Penal Code and not the English law of libel and slander.

Held, therefore, that defamatory statements are not privileged merely because they are used in a petition preferred in a judicial proceeding.

It is not essential that, before a person can be held entitled to the privilege of having made a statement in good faith for the protection of his interests, he should establish that every word he has spoken or written is literally true. If, having regard to facts and circumstances within his knowledge, he might, as an ordinarily reasonable and prudent man, have drawn the conclusions which he has expressed in defamatory language for the protection of his own interests, he may fairly be held to have made out his good faith.

THE plaintiff in this suit claimed compensation for injury to his reputation, on the ground that the defendant had used false and malicious expressions concerning him in a petition, dated the 17th September, 1879, filed in the Criminal Court. It appeared that one Kashi Pandey had instituted criminal proceedings against the defendant, charging him with having forced his way into his house and used threatening language. The hearing of this charge against the defendant was fixed for the 19th September, 1879. On the 17th September, 1879, the defendant preferred a petition to the Magistrate trying the case, by way of defence to the charge made against him, in which he made statements to the effect that the plaintiff had caused the criminal proceedings to be instituted against him in order to extort money. The defendant set up as a defence to this suit that the expressions used by him in the petition of the 17th September, 1879, even if defamatory, were privileged, inasmuch as they were used in a petition preferred in a judicial proceeding, and inasmuch as they were used in good faith for the protection of his own interests. The Court of first instance disallowed this defence, and gave the plaintiff a decree. On appeal by the defendant the lower appellate Court held, following certain

* Second Appeal, No. 1252 of 1880, from a decree of S. M. Moens, Esq., Judge of Mirzapur, dated the 8th June, 1880, modifying a decree of Kazi Wajeh-ul-lah Khan, Subordinate Judge of Mirzapur, dated the 11th February, 1880.

1881

ABDUL HAKIM v. CHANDAR MUKARJI.

English cases (1), that the expressions used by the defendant concerning the plaintiff in the petition of the 17th September, 1879, were not actionable, even though they were false, scandalous, and malicious, inasmuch as they were used in a petition preferred in a judicial proceeding and were pertinent to the occasion. It also decided that such expressions were not actionable, inasmuch as they were used in good faith for the protection of the defendant's interests; and it dismissed the suit.

The plaintiff appealed to the High Court, contending that, according to the law of India, the expressions used in the petition of the 17th September, 1879, were not privileged merely because they had been used in a petition preferred in a judicial proceeding and were not irrelevant; and that such expressions were not used in good faith, and were therefore not privileged.

Pandit *Ajudhia Nath*, for the appellant.

Mr. *Hill* and the *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), for the respondent.

The judgment of the Court (STRAIGHT, J., and TYRRELL, J.,) was delivered by

STRAIGHT, J.—We are by no means prepared to accept in its integrity the view pressed upon us by the learned counsel for the defendant-respondent, that the defamatory matter complained of by the plaintiff-appellant is absolutely privileged, because it was contained in a petition filed in the Magistrate's Court, in respect of a case pending therein. No doubt the principles enunciated in numerous English decisions bearing upon the point strongly favour his contention. But we do not consider that we are arbitrarily bound to follow those precedents, or to adopt them as conclusively applicable to all libel or slander suits in our Courts. The state of society and the condition of things in the two countries is wholly dissimilar, and to lay it down as an inflexible rule that any false and malicious statements, no matter how defamatory, may be made with impunity if only embodied in a petition filed in reference to some pending case, could not but entail the most mischievous

(1) *Henderson* v. *Broomhead*, 28 L. J., Exch. 360; *Revis* v. *Smith*, 25 L. J., C. P., 195; *Hodgson* v. *Scarlett*, 1 B. and A. 232.

consequences. At any rate it seems to us that when there is substantive law which can be appealed to for information and guidance, the safer course is to look there to ascertain some intelligible rule or rules by which determination of suits like the present should be regulated. Although the provisions of the Penal Code with regard to defamation are applicable to criminal charges, the principles therein embodied are well adapted to supply the tests by which the liability or otherwise of defendants to civil suits should be decided. It is difficult to see why, when no distinction is drawn by the criminal law between written and spoken defamatory matter, and both are held equally punishable, that an absolute privilege should be accorded a defendant to protect him from pecuniary liability which would not avail him in the Criminal Court. We therefore do not think that the doctrine of absolute privilege propounded by the respondent's counsel should be unreservedly followed in our Courts, and so far as the Judge has applied it in determining the present case, his judgment appears to us to be open to objection. Fortunately, however, he dealt with the appeal before him from another aspect which we consider the right one, and has recorded a sufficient finding which will justify us in upholding his decision. The true test by which the liability of the defendant had to be tried was, did he in his petition of 17th September, 1879, make the imputations upon the plaintiff in good faith, that is with due care and caution, for the protection of his own interests? This the Judge has answered by finding that "the evidence in the case is sufficient to show that the defendant had adequate reasons for supposing that Abdul Hakim was at the bottom of the charges against him: these charges were obviously and clearly made for the purpose of extorting money." Then after recapitulating some of the evidence, he goes on to say: "This independently of other evidence in the case is enough to show that Tej Chandar Mukarji was not acting recklessly or groundlessly in making the statements contained in his petition." We cannot say, as asked by the appellant's pleader, that there was no evidence to justify the Judge in coming to this conclusion. On the contrary, there certainly was some from which he might not unreasonably draw the inferences at which he arrived. It is not essential that, before a person can be held entitled to the privilege of having made a

1881

ABDUL HAKIM v. JOGENDAR MUKARJI.

statement in good faith for the protection of his interests, he should establish that every word he has spoken or written is literally true, though it is obvious that, according as it is more or less true or false, the question of his good faith or otherwise, must be determined. If, having regard to certain facts and circumstances within his knowledge, he might, as an ordinarily reasonable and prudent man, have drawn the conclusions which he has expressed in defamatory language for the protection of his own interests, he may fairly be held to have made out his *bona fides*. This the Judge holds the defendant in the present suit to have done, and with his finding upon that head we see no ground to interfere. The appeal must be dismissed with costs.

Appeal dismissed.

1881
May 21.

Before Mr. Justice Spankie and Mr. Justice Straight.

ABHAI PANDEY AND OTHERS (PLAINTIFFS) *v.* BHAGWAN PANDEY AND OTHERS (DEFENDANTS).*

Partition of Mahál by arbitration—Sir-Land—Act XIX of 1873 *(N.-W. P. Land-Revenue Act), s.* 125*—Jurisdiction of Civil Courts.*

When the co-sharers of a mahál agree to have such mahál partitioned by an arbitrator, they must be understood to agree to the arrangements made by such arbitrator, and if he provides by his award that the sír-land of one co-sharer that falls by lot into the share of another co-sharer should be surrendered, that land must be given up by the co-sharer who has hitherto cultivated it. Such co-sharer's consent to such arrangement must be understood to have been given when he agreed to arbitration. S. 125 of Act XIX of 1873 must not be regarded as empowering a co-sharer, who has once given his consent to surrender the cultivation, to continue to cultivate the land against the will of the co-sharer who has become the owner of it by partition.

An agreement to refer to arbitration the partition of a mahál provided that, if sir-land belonging to one co-sharer were assigned to another co-sharer, the co-sharer to whom the same belonged should surrender it to the co-sharer to whom it might be assigned. The arbitrator assigned certain sir-land belonging to the defendants in this suit to the plaintiffs. The partition was concluded according to the terms of the award. The defendants refused to surrender such land to the plaintiffs. The plaintiffs distrained the produce of such land, alleging that it was held by certain persons as their tenants and arrears of rent were due. The defendants thereupon sued the plaintiffs and such persons in the Revenue Court, claiming

* Second Appeal, No. 1275 of 1880, from a decree of J. W. Power, Esq., Judge of Gházipur, dated the 14th September, 1880, reversing a decree of Munshi Man Mohan Lal, Munsif of Ballia, dated the 13th July, 1880.