an exceptional case. In my opinion that decision was wrong for the reasons I have already given and the decision of the learned Judge of this Court was right and I think that this appeal should be dismissed with costs.

BUCKNILL, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Das and Adami, J.J.

MAHARAJ KUMAR JAGAT MOHON NATH SAH DEO. 1922.

February, 1.

v.

KALIPADA GHOSH.*

Defamation—legal practitioner, privilege of—civil liability in India, common law rules applicable to.

Statements of legal practitioners made in the course of their professional duty are absolutely privileged even though the statements are maliciously defamatory and irrelevant.

Sullivan v. *Norton*(1), approved.

Munster v. *Lamb*(2), followed.

The rules of the English Common Law apply to questions of civil liability for defamation in India.

Satish Chandra Chakravarti v. *Ram Dayal De*(3), approved.

Appeal by the plaintiff.

The facts of the case material to this report are stated in the judgment of Das J.

DAS, J.—This was an action by the appellant for recovery of Rs. 1,00,000 as damages from the respondent. The learned District Judge without going into the evidence has dismissed the suit on the ground that the plaint disclosed no cause of action. We must accordingly assume for the purpose of our decision

* Appeal from Original Decree No. 163 of 1919, from an order of C. H. Reid, Esq., Judicial Commissioner of Chota Nagpur, dated the 5th May, 1919.

(1) (1887) I. L. R. 10 Mad. 28 (F. B.) (2) (1882-83) 11 Q. B. D. 588.
(3) (1921) I. L. R. 48 Cal. 388 (F. B.)

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DAS, J.

that the allegations made in the plaint are correct. The question which we have to determine is that assuming that the allegations in the plaint are correct, whether the plaintiff is entitled to recover damages for defamation as against the defendant.

The defendant is a vakil practising in the District Court of Ranchi. The plaintiff alleges that owing to some report made by him to the Maharaja of Chota Nagpur whose vakil the defendant is, the defendant began to act against the interest of the plaintiff. He further alleges that he was examined as a witness in a certain action brought by Messrs. Sarkar Barnard and Company, against the plaintiff's wives and that in the course of his argument on behalf of the plaintiffs in that case the present defendant who appeared as the vakil on behalf of Messrs. Sarkar Barnard and Company,

"used very abusive language against the plaintiff and described him as a liar and swindler without any justification and out of sheer personal grudge and malice against him with the malicious intent of lowering the plaintiff in the estimation of the public".

These are the allegations of the plaintiff and we have to determine whether on these allegations the plaintiff is entitled to claim any damages from the defendant.

The leading case in England is *Munster* v *Lamb*(1). In that case it was admitted on behalf of the plaintiff that so long as an advocate acted *bonâ fide* and said what is relevant, owing to the privileged occasion, defamatory statements made by him did not amount to libel or slander although they would have been actionable if they had not been made whilst he was discharging his duty as an advocate. But it was contended that an advocate cannot claim the benefit of his privilege unless he acts *bonâ fide*, that is, for the purpose of doing his duty as an advocate and unless what he says is relevant. Precisely the same argument has been advanced before us by Mr. *Yunus* who has argued the appeal on behalf of the appellant. Brett, M. R.

(1) (1882-83) 11 Q. B. D. 588.

after discussing the cases which establish that an action would not lie either against Judges or witnesses although they speak maliciously and without reasonable or probable cause, said as follows. "If upon the grounds of public policy and free administration of the law the privilege be extended to judges and witnesses, although they speak maliciously and without reasonable or probable cause, is it not for the benefit of the administration of the law that counsel also should have an entirely free mind? Of the three classes—judge, witness, and counsel—it seems to me that a counsel has a special need to have his mind clear from all anxiety. A counsel's position is one of the utmost difficulty. He is not to speak of that which he knows; he is not called upon to consider whether the facts with which he is dealing are true or false. What he has to do, is to argue as best he can, without degrading himself, in order to maintain the proposition which will carry with it either the protection or the remedy which he desires for his client. If amidst the difficulties of his position he were to be called upon during the heat of his argument to consider whether what he says is true or false, whether what he says is relevant or irrelevant, he would have his mind so embarrassed that he could not do the duty which he is called upon to perform. For, more than a judge, infinitely more than a witness, he wants protection on the ground of benefit to the public. The rule of law is that what is said in the course of the administration of the law, is privileged; and the reason of that rule covers a counsel even more than a judge or a witness. To my mind it is illogical to argue that the protection of privilege ought not to exist for a counsel, who deliberately and maliciously slanders another person. The reason of the rule is, that a counsel, who is not malicious and who is acting *bonâ fide*, may not be in danger of having actions brought against him. If the rule of law were otherwise, the most innocent of counsel might be unrighteously harassed with suits, and therefore it is better to make the rule of law so large that an innocent

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counsel shall never be troubled, although by making it so large counsel are included who have been guilty of malice and misconduct", and then the learned Judge laid down the law as follows, "With regard to counsel, the questions of malice, *bonâ fide* and relevancy, cannot be raised; the only question is, whether what is complained of has been said in the course of the administration of the law. If that be so, the case against a counsel must be stopped at once". It is admitted in this case that the words complained of were uttered by the defendant in the course of the administration of law. That being so, the action could not be maintained against the defendant if the question as between the plaintiff and the defendant arose in England.

But it has been urged by Mr. *Yunus* that the rules of English Common Law are not applicable in this country and that we are bound in the administration of the law in this country by the rules formulated by the Indian Penal Code. To this argument a conclusive answer has been given by the Full Bench of the Calcutta High Court in the case of *Satish Chandra Chakravarti*, v. *Ram Dayal De*(1). Mukherji, A. C. J. delivering the judgment of the Full Bench said as follows, "it is necessary to emphasise that in this country, questions of civil liability for damages for defamation and questions of liability to criminal prosecution for defamation do not, for purpose of adjudication, stand on the same basis; as regards the former, we have no codified law; as regards the latter, the relevant provisions are embodied in the Indian Penal Code". That learned and distinguished Judge then pointed out that in all cases for which no specific statutory directions are given, Judges are bound to act according to justice, equity and good conscience and that there is a large preponderance of judicial opinion in favour of the view that the principles of justice, equity and good conscience applicable in such circumstances should be identical with the corresponding relevant rules of the Common Law of England. Mr. *Baikuntha Nath Mitter*, who appeared

(1) (1921) I. L. R. 48 Cal. 388 (F. B.).

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on behalf of the respondent, has convinced us by his very able and lucid arguments that the principles embodied in *Munster* v. *Lamb*(1) are equally applicable to this country and that to depart from the rule enunciated in England would be to affect the administration of justice in this country. The decision of the Madras Full Bench in the case of *Sullivan* v. *Norton*(2) completely supports the arguments of Mr. *Baikuntha Nath Mitter*.

I have considered all the decisions on the point, and I am not prepared to differ from the decision of the Madras High Court in the case to which I have referred. In my opinion the view taken by the learned District Judge is right and ought to be affirmed. I would dismiss this appeal with costs.

ADAMI, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Coutts and Ross, J.J.

SABRAN SHEIKH

v.

ODOY MAHTO.*

1922.

February, 5.

Evidence Act, 1872 (*Act I of* 1872), *section* 13—*document executed by third persons admitting plaintiff's right, admissibility of.*

In a suit in which the plaintiffs claimed the land in dispute as their *man* land and the defendant claimed it as his *jote*, the plaintiffs produced an *ekrarnama* addressed by a third person to an ancestor of the plaintiffs in which the land in suit was described as *man* land. *Held*, that the *ekrarnama* was admissible under both clauses (*a*) and (*b*) of section 13 of the Evidence Act, 1872.

Abdul Ali v *Syed Rejan Ali*(3), doubted.

* Appeal from Appellate Decree No. 195 of 1920, from a decision of B. Nut Bihari Chaterji, Subordinate Judge of Purulia, dated the 17th November, 1919, setting aside a decision of B. Shiwa Nandan Prasad, Munsif of Purulia, dated the 9th July, 1919.

(1) (1882-83) 11 Q. B. D. 588. (2) (1887) I. L. R. 10 Mad. 28.
(3) (1914-15) 19 Cal. W. N. 468.