residence here impolitic. The latter supposition is, however, hardly reconcileable with his return since the 12th February.

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MIRZA ALLY BEBANEE v. SYED HYDER HOOSEIN.

Decree set aside.

Attorney for the plaintiff :—*Mirza Hoosein Khan.*

Attorneys for the defendants :—*Messrs. Fletcher and Smith.*

[ORIGINAL CIVIL.]

Before Sir Charles Sargent, Kt., Justice, and Mr. Justice Bayley.

L. A. WALLACE AND OTHERS (PLAINTIFFS) *v.* F. G. JEFFERSON (DEFENDANT).*

February 15.

Practice—Inspection—Act X. of 1877, Section 130.

Under section 130 of the Civil Procedure Code (X. of 1877) a Judge has no discretion to refuse to allow inspection of documents relating to matters in question in a suit, provided they are not privileged.

Confidential communications between principal and agent, relating to matters in a suit, are not privileged.

Held, in a suit for an injunction to restrain the defendant from using certain trade marks, that telegrams and letters between the plaintiffs' firm in London and their managing agent in Bombay, relating to the subject-matter of the suit, were not privileged.

Bustros v. *White* (1) and *Anderson* v. *Bank of British Columbia* (2) followed.

IN this suit, which was filed on the 8th November 1877, the plaintiffs prayed to be declared entitled to the sole and exclusive use of certain trade marks described in the plaint, and sought an injunction against the defendant to restrain him from using the same.

The plaintiffs were a firm carrying on business in London under the name of Wallace Brothers, and had branch firms in Manchester and Bombay. The defendant was a merchant in Bombay, carrying on business under the name of King & Co.

The plaintiffs refused to give the defendant inspection of certain documents relating to the subject-matter of the suit, and con-

* Suit No. 717 of 1877.

(1) L. R. 1 Q. B. D. 423. (2) L. R. 2 Ch. D. 644.

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sisting of telegrams and correspondence which passed between the Bombay firm and the firms in London and Manchester, on the ground that they were "private documents written in contemplation of litigation or after litigation had commenced." A summons in chambers was obtained by the defendant, requiring the plaintiffs to show cause why inspection should not be given, and the matter was adjourned into Court for argument. In a supplemental affidavit filed by Mr. Richardson, the agent of the plaintiffs' firm in Bombay, the nature of the documents in question was stated as follows :—

1. "The memorandum of the 29th September 1877 (from the firm in Bombay to the firm in Manchester) states the opinion of the writer with regard to a part of the subject-matter of this suit and some observations on the course to be adopted.

2. "The telegram of the 24th October 1877 (from the firm in London to the firm in Bombay) contains instructions as to legal proceedings to be instituted against the defendant.

3. "The letter of the 26th October 1877 (from the firm in Manchester to the firm in Bombay) confirms the telegram mentioned in the last paragraph, and contains instructions with regard to the proceedings to be instituted; and all the other letters and telegrams referred to in the schedule contain instructions with regard to this suit, or advice and observations on the course to be pursued with reference to the subject-matter of the suit, or advice with regard to the evidence to be obtained for this suit, or reports of proceedings already had in this suit.

4. "None of the said documents contain any information or statement of fact relating to the subject-matter of this suit, save information and facts communicated expressly for the purpose of being used by the plaintiffs in this suit, and information with regard to the proceedings already had in this suit, and which last-mentioned information is known to the defendant as well as to the plaintiffs."

Lang, for the plaintiffs, showed cause :—The defendant does not allege that these documents contain anything material to his case. The Court requires some evidence of this. The defendant

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has no right to an inspection merely for the purpose of fishing for information which may possibly be useful to him. The fact that the documents relate to the suit, does not show they are material to plaintiffs' case. The rule is given in *Kerr* on Discovery.(1) These documents are privileged. Some of them are communications from the plaintiffs, who reside in England, to the solicitors who are conducting this case in Bombay. No doubt they go through Mr. Richardson, the agent, but they are intended for the solicitors, and so come within the first of the two classes of privilege mentioned by Mellish, L.J., in *Anderson* v. *Bank of British Columbia*.(2) The letters relating to the evidence required at the trial are also privileged; see observation of Mellish, L.J., in the same case.(3) If no documents are protected except those written by or to solicitors, it will be necessary for commercial firms to conduct all private correspondence through their solicitors.

Inverarity, for defendant, *contra*:—This is an application under section 130 of the new Civil Procedure Code (Act X. of 1877). This section is taken from the English Judicature Act, 1875 (Order XXXI., Rule 11). Under that rule it has been held that the Court has no discretion to refuse inspection, unless the documents are privileged: *Bustros* v. *White*.(4) *Primâ facie*, all documents should be produced. The burden of proof of privilege lies on the plaintiffs. We need not show that the letters contain anything material to our case. It is admitted that they relate to this suit, and that is enough under section 130 of Civil Procedure Code (Act X. of 1877).

[SARGENT, J.:—Section 130 gives inspection "if the Judge thinks right."]

Bustros v. *White*(5) shows that these words give the Court no discretion. That case was decided by eight Judges. No privilege is shown here. In *Anderson* v. *Bank of British Columbia*(6) the letter was written for the very purpose of obtaining legal advice, and yet inspection was ordered. That was a stronger case than this.

(1) Page 18.
(2) L. R. 2 Ch. D. 644; see p. 658.
(3) *Ibid.* p. 654.
(4) L. R. 1 Q. B. D. 423, S. C. 45 L. J. Q. B. 642.
(5) L. R. 1 Q. B. D. 423.
(6) L. R. 2 Ch D. 644; see p. 645.

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Hutchinson v. *Glover* (1) and *English* v. *Tottie* (2) were also cited.

SARGENT, J. :—In *Bustros* v. *White* (3) it was decided by a Court of Appeal consisting of eight Judges that, under Order XXXI., Rule 11, of the English Judicature Act, a Judge has no discretion as to refusing to allow the production of documents in possession of a party to the suit relating to the matter in question, provided the documents are not privileged. Section 130 of the Civil Procedure Act of 1877 would appear to have been copied from the above rule, and we think, therefore, it is advisable to adopt the English ruling as to its construction. As the defendant's affidavit admits that the documents in question relate to the matter in dispute, the only question to be determined is, whether they are privileged. They consist of two or three telegrams and letters, all of which passed between the plaintiffs in London and Mr. Richardson, who manages their business in Bombay. It was said that they were confidential communications between principals and their agents. But the mere circumstance that communications are confidential, does not render them privileged, as pointed out by the Master of the Rolls in *Anderson* v. *Bank of British Columbia*. (4) They must be, to use his words, "confidential communications with a professional adviser," and this view of the law was confirmed by the Court of Appeal consisting of Lords Justices James and Mellish. Nor would it be possible, having regard to the position in which Mr. Richardson stood to the plaintiffs, to treat him as a deputy of the solicitors in Bombay, even if the plaintiffs had at that time been in communication with professional advisers, which does not appear on the affidavits to have been the case. Lord Justice Mellish in the case of *Anderson* v. *Bank of British Columbia* suggests that the privilege may, perhaps, extend to cases in which an agent, as distinguished from a solicitor, is employed in communicating evidence to be used at the trial. But it is not suggested that the letters from Mr. Richardson were of that nature. The documents, as shown by Mr. Richardson's affidavit, are of the same nature as those of which produc-

(1) L. R. 1 Q. B. D. 139.
(2) L. R. 1 Q. B. D. 141.
(3) L. R. 1 Q. B. D. 423.
(4) L. R. 2 Ch. Div. 644, 653.

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tion was ordered in *Anderson* v. *Bank of British Columbia*. Production must be ordered. Costs to be costs in the cause.

BAYLEY, J. :—I entirely concur.

Order accordingly.

Attorneys for the plaintiffs :—*Messrs. Craigie, Lynch, and Owen.*

Attorneys for the defendant :—*Messrs. Jefferson and Payne.*

[APPELLATE CIVIL.]

Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Melvill.

1877. December 12.

SATKU VALAD KADIR SAUSARE (ONE OF ORIGINAL DEFENDANTS), APPELLANT *v.* IBRA'HIM AGA' VALAD MIRZA' AGA' (ONE OF ORIGINAL PLAINTIFFS), RESPONDENT.*

Obstruction to a public road—Public nuisance—Right of suit—Indian Penal Code (Act XLV. of 1860), Chapter XIV—Injunction.

Plaintiffs, who were Mussulmans, sued to establish their right to carry *tabuts* in procession along a certain road to the sea, and alleged that the defendants (also Mussulmans) obstructed them in doing so. The plaint, however, did not allege any personal loss or damage to the plaintiffs, arising from the obstruction. Both the lower Courts found, as a fact, that the road along which plaintiffs desired to carry their *tabuts* to the sea was a public road.

Held in special appeal that plaintiffs could not maintain a civil suit in respect of such obstruction, unless they could prove some particular damage to themselves personally in addition to the general inconvenience occasioned to the public. The mere absence of the religious or sentimental gratification arising from carrying *tabuts* along a public road, is not any such particular loss or injury as would be sufficient, according to English and Indian precedents, to sustain a civil action.

Authorities as to what constitutes special damage sufficient to sustain a civil suit in such cases, referred to.

THIS was a special appeal from the decision of C. B. Izon, Acting District Judge of Ratnágiri, in appeal No. 85 of 1877, reversing the decree of T. Moore, Subordinate Judge of the same place, in original suit No. 957 of 1873.

This suit was instituted by Ibráhim Agá and two others against Satku and fifteen others. The persons, other than those named, did not appear in special appeal.

* Special Appeal No. 230 of 1877.