

course to pursue is to set aside the conviction and direct a retrial.

SHAH, J. :—I agree.

Conviction set aside : retrial ordered.

R. R.

1920.

EMPEROR
v.
DINANATH
SUNDARJI.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1920.

November
15.

VITHAL RAMCHANDRA GULWADI (ORIGINAL PLAINTIFF), APPELLANT
v. RAGHAVENDRA RAMRAO BAINDUR, SUBORDINATE JUDGE OF
HONAVAR (ORIGINAL DEFENDANT), RESPONDENT*.

*Judicial Officers Protection Act (XVIII of 1850)—Libel—Pleader—Judge—
Defamatory statement made by a judge in the course of a suit—Discharge of
judicial duty—Judge protected from being sued in a Civil Court.*

The plaintiff, a pleader, while conducting a suit in the defendant Subordinate Judge's Court applied for an adjournment. The defendant, considering that the application contained a statement which was false and was intended to deceive the Court, called upon the plaintiff to apologise and withdraw the alleged objectionable statement. The plaintiff having refused to apologise or to withdraw the statement, the defendant issued a notice to the plaintiff and reported his conduct to the District Judge.

The plaintiff alleged that both the notice and the report contained defamatory statements and therefore sued the defendant for libel.

Held, that the defendant in dealing with the conduct of the plaintiff pleader was acting as a Judge in discharge of his judicial duty, and was, therefore, protected from any liability to be sued in a Civil Court under Act XVIII of 1850.

* First Appeal No. 195 of 1919
(with First Appeal No. 170 of 1919).

1920.

VITHAL
RAM-
CHANDRA
v.
RAGHA-
VENDRA
RAMRAO.

FIRST appeal against the decision of R. T. F. Kirk, District Judge of Bijapur, in Suit No. 3 of 1918.

Suit for libel.

The plaintiff who was a pleader practising in the Subordinate Judge's Court at Bagalkot, appeared for the plaintiffs in Suit No. 229 of 1914. The defendant was the Additional Subordinate Judge of Bagalkot before whom the suit was tried. The suit was filed for dissolution of partnership and for accounts. On the 25th August 1916, the plaintiff filed an application for adjournment on the grounds stated therein as follows:—

"This case in its earlier stages was before the permanent Court of Mr. Kamat. On more than one occasion he expressed that after the decision of the first two issues in the case he would pass a preliminary decree and on the footing of the said decision referred the accounts of the partnership to a Commissioner for taking accounts..... It was on this understanding no steps were taken to have the accounts of Lalji Punaji's shop of Bombay produced and proved on commission..... This Court is of opinion that it should not pass a preliminary decree as there is no need for it and that it would proceed to pass a final decree and that all the evidence including the Bombay evidence should be before the Court. The Court's opinion has taken the plaintiffs by surprise and they are not prepared as far as Bombay accounts of Lalji Punaji's shop are concerned."

On reading the application the defendant judge took objection to the words "The Court's opinion has taken the plaintiffs by surprise" and observed that they were offensive to the dignity of the Court. He, therefore, ordered that the application should be withdrawn and a proper apology should be made to the Court.

On the 8th of September 1916, an application was made to the Court by one of the plaintiffs, withdrawing the application of 25th August 1916 and asking for pardon; but it was filed by Mr. Kirsur, another pleader for the

plaintiffs. The defendant then made the following endorsement on it: "The pleader who has signed the application in question must also sign this application; otherwise the apology is not complete and full." The plaintiff having refused to sign the application, the defendant caused a notice, dated the 4th October 1916, to be served on the plaintiff to show cause why such steps should not be taken against him as would be necessary to maintain the dignity of the Court. The plaintiff severed his connection with the suit on the 24th November 1916. The defendant then held an inquiry and on the 27th November 1916 recorded an order requiring the plaintiff to apologise or withdraw the statements. He also made a report to the District Judge regarding the professional misconduct of the plaintiff as a pleader (this report formed the subject-matter of another Suit No. 1 of 1918). The present Suit No. 3 of 1918 was filed by the plaintiff claiming damages for libel contained in the notice of 4th October 1916 and in the order of 27th November 1916.

The defendant contended that the suit was bad for want of notice under section 80 of the Civil Procedure Code, 1908; that it was barred under the Judicial Officers' Protection Act (XVIII of 1850); that the statements contained in the notice and order were true; and that the allegations regarding the personal ill-will or malice of the defendant towards the plaintiff were not true.

The District Judge dismissed the suit on the ground that the defendant was protected by the Judicial Officers Protection Act (XVIII of 1850). His reasons were :

"Again, the alleged misconduct occurred in an application in a suit then pending. The notice and order has reference to the wording of that application, which was considered objectionable. I must hold that it is a Court's

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duty to issue such notices and orders under such circumstances. It is I think contemplated in the Rule 14 of p. 259 of the Civil Circulars that the word 'Judge' should include Assistant and Subordinate Judges, and not, as contended by Mr. Kowjalgi, refer merely to District Judges, if the District Judges alone had been meant, then the Rule would have called them District Judges. In other Rules in the Civil Circular at p. 3, line 1 'Judge' is a comprehensive term : (also p. 6, Rule 21 ; p. 20, Rule 57, &c.)"

The plaintiff appealed to the High Court.

Tyabji, with *G. P. Murdeshwar* and *V. R. Sirur*, for the appellant.

The Government Pleader, for the respondent.

MACLEOD, C. J.:—This is an appeal from the decision of the District Judge of Bijapur in a suit filed by the plaintiff, a pleader of Bagalkot, against Mr. Raghvendra Ramrao Bajindur, an Additional Subordinate Judge of Bagalkot, claiming damages for libel contained in two documents (1) a notice, dated the 4th October 1916, and (2) an order, dated the 27th November 1916. The defendant pleaded that he was protected by Act XVIII of 1850, in that the acts complained of were done by him in discharge of his judicial duty. Both the documents complained of were written by the defendant and served on the plaintiff owing to an unfortunate difference of opinion which had arisen between the plaintiff and the defendant in the course of a suit in which the plaintiff was acting as a pleader for one of the parties. The defendant objected to the conduct of the plaintiff acting as such pleader and called upon him to apologise. The plaintiff did not apologise, and in consequence of his refusal the defendant addressed a further communication to the District Judge which is the subject-matter of the other suit filed by the plaintiff against the defendant. It has been argued,

as it was argued in the lower Court, that these written communications made by the defendant to the plaintiff and to the District Judge respectively were not made in the discharge of the defendant's judicial duty. The argument seems to be that the duties of a Judge are of various kinds. He has to hear cases between contesting parties, and it is only when acting in that way that he is acting judicially, or acting in discharge of his judicial duties, but if he is considering the conduct of the pleaders who appear before him, he is not acting in discharge of his judicial duty, and that, therefore, he is not protected by Act XVIII of 1850. I do not think that the Act can be read in that way. It seems to me beyond all doubt that the Judge in dealing with the conduct of the pleader was certainly acting in discharge of his judicial duty, and he is, therefore, protected from any liability to be sued in a civil Court. It may be that under the protection of the Act the Judge may be so foolish or so rash as to exceed the limits of propriety and gratify his own spite against the person involved. But it is difficult to believe that any Judge would be guilty of such impropriety, and there is no reason whatever to believe that the defendant in this case has been guilty of such an impropriety. Even if it were assumed that he had been, he is protected by the Act, and the remedy for the complainant would be to report the matter to a higher authority. I think, therefore, the District Judge came to the right conclusion when he held that the defendant was protected by the Judicial Officers' Protection Act XVIII of 1850, and the appeal must be dismissed with costs.

Suit No. 1 of 1918, in which Appeal No. 170 of 1919 was filed, was based on the report which was made by the defendant to the District Judge with regard to the plaintiff's conduct. The suit was dismissed for the

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same reasons as the other suit was dismissed. It seems perfectly clear to me that it was rightly dismissed, as the defendant reporting the conduct of the plaintiff to the District Judge was acting in discharge of his judicial duty. That appeal, therefore, will also be dismissed with costs.

SHAH, J.:—I agree. In both these cases the acts attributed to the defendant were done by him in the discharge of his judicial duty, and the defendant was acting judicially. I do not feel any doubt whatever on that point. That is a complete answer to the suits filed by the plaintiff under Act XVIII of 1850.

Appeals dismissed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

NARAYAN VASUDEVACHARYA KATTI, HEIR AND NEPHEW OF DECEASED
BINDACHARYA ANNACHARYA KATTI (ORIGINAL DEFENDANT),
APPELLANT v. AMGAUDA MALAGAUDA PATIL (ORIGINAL PLAINTIFF),
RESPONDENT*.

November
29.

*Civil Procedure Code (Act V of 1908), Order XXI, Rules 89 and 92 (2)—
Claimant of property sold in possession—Claimant paying into Court the
decretal amount to set aside sale—Whether payment voluntarily or involun-
tarily made—Suit to recover amount paid.*

In execution of a decree obtained by the defendant against a third party, the property was sold and purchased by the defendant. The plaintiff who claimed

* Second Appeal No. 742 of 1919.