party, for the zemindars are in no way bound by that order. They can go upon the land at any moment or they may give *pottahs* to anybody else they like with the object of retaining possession of the land. The tenants, against whom the order has been made may abide by it, but that in no way puts an end to the dispute and in no way prevents the apprehension of a breach of the peace, the purpose for which alone the law contemplates a proceeding of the special character provided for in s. 145. We are of opinion, therefore, that this order is bad for non-joinder of the Shahapur zemindars. We do not think it necessary to [452] express any opinion on the other question, upon which this Rule was granted. We think that the present order must be set aside and we set it aside accordingly. This order, however, will not stand in the way of the Magistrate, if he considers that there is still an apprehension of a breach of the peace, to take such steps as he may be advised.

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ORIGINAL CIVIL.

Before Mr. Justice Harington.

BHOONI MONEY DOSSEE v. NATOBAR BISWAS.*

[11th and 12th April, and 1st May, 1901.]

Slander—Defamation—Action for slander—Special Damage—Damage for mental distress alone, not recoverable—Cause of action—Presidency Town—English Law of Slander, rules of—Charter of 1726—Limitation Act (XV of 1877), Sch. II, Art. 25.

In an action for damages against the defendant for having falsely and maliciously used slanderous words imputing unchastity to the plaintiff, no special damage was alleged in the plaint, nor any actual damage proved at the trial :

***Held*, that, as the words were not *per se* actionable, and as no damage in fact was alleged or proved, the action must be dismissed with costs.**

The decision of the majority of the Full Bench in *Girish Chunder Mitter* v. *Jatadhari Sadukhan* (1) approved and followed.

***Parvathi* v. *Mannar* (2) discussed. *Kashiram Krishna* v. *Bhadu Bapuji* (3), *Jogeshwar Sharma* v. *Dinaram Sharma* (4), and *Dawan Singh* v. *Mahip Singh* (5) distinguished.**

Damages are not recoverable for mental distress *alone*, caused to the plaintiff by slanderous words conveying insult: *Wilkinson* v. *Downton* (6) *Lych* v. *Knight* (7), referred to.

[453] By the Common Law of England introduced into Calcutta by the Charter of 1726, a person injured by slanderous words can recover damages in an action, when actual damage has been caused.

***The Advocate-General of Bengal* v. *Ranee Surnomoyee Dossee* (8), *Ratcliffe* v. *Evans* (9), referred to.**

The Rules of English Law of slander discussed, and held to be applicable to this case.

THE plaintiff, a Hindu married woman of *Soori* caste, residing at No. 41, Mundle Street in the town of Calcutta, brought this action for slander against the defendant, also of *Soori* caste, residing at No. 40 in the same street, claiming Rupees 5,000 as damages from the defendant.

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* Original Civil Suit No. 320 of 1898.

(1) (1899) I. L. R. 26 Cal. 653.
(2) (1884) I. L. R. 8 Mad. 175.
(3) (1870) 7 Bom. H. C. A. C. 17.
(4) (1893) 2 C. W. N. 128 (Notes).
(5) (1888) I. L. R. 10 All. 425, 455.
(6) (1897) 2 Q. B. 57.
(7) (1861) 9 H. L. C. 577, 598.
(8) (1868) 9 Moo. I. A. 387, 426.
(9) (1892) 2 Q. B. 524.

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A quarrel broke out between the members of the respective families of the plaintiff and the defendant, and on December 1, 1897, the defendant abused the plaintiff making an imputation on her character to the effect that she was a prostitute. The plaintiff thereupon laid a complaint in the Court of the Presidency Magistrates of Culcutta under ss. 500 and 504 of the Penal Code.

On December 29, 1897, when that case came on for hearing, the defendant having expressed his unqualified regret and apologised to the plaintiff, and having given an undertaking that he would not molest the plaintiff in future, the said complaint was withdrawn by the plaintiff.

The defendant, notwithstanding his aforesaid apology and undertaking, the very next day, *i.e.* on December 30, 1897, abused the plaintiff (in Bengali) in the presence of several persons to this affect: "You are unchaste, you are a prostitute; I will publish before the caste people that you are a prostitute, and stop invitations to you. I took you to the garden-house at Kalighat and had illicit intercoure with you." ("তুমি অসতী, তুমি বেশ্যা; লোকের কাছে বলবো আর নিমন্ত্রণ বন্ধ করবো। কালীঘাটের বাগানে নিয়ে গিয়ে তোমার জাত খেয়েছি") And the plaintiff alleged that the defendant requested one Saratchander Shaw, also of *Soori* caste, to warn his father not to accept from, or extend hospitality to, the plaintiff [454] on the ground of her unchastity. The plaintiff further alleged that on various subsequent dates the defendant falsely and maliciously published the aforesaid slanders at different places in Calcutta.

On January 29, 1898, the plaintiff instructed her solicitor to write a letter to the defendant calling upon him to pay Rs. 5,000 to the plaintiff, being the amount of damages suffered by her on account of the said imputations made on her chastity, and to tender an apology; and in default thereof, within a week from that date, to institute proper proceedings against him. A letter was accordingly sent to the defendant, but no reply was received to it, whereupon the present action was brought.

No special damage was alleged in the plaint, save an allegation of a general character in para. 8 of the plaint, which ran as follows:—

"8. That the aforesaid imputation made by the defendant to the plaintiff's character is utterly false and malicious, and she has in consequence of the said words and such acts of the defendant as aforesaid suffered pain of body and mind, and the said imputation has lowered her in the estimation of her relations and acquaintances, neighbours and caste people, and injured her materially in her credit and reputation, and brought shame and disgrace on her; and she has sustained damages, which she assesses at Rs. 5,000."

The defendant alleged that he carried on the business of a tailor and outfitter, that on or about the beginning of October 1897, Debendra Nath Shaw, the husband of the plaintiff, gave certain orders to the defendant for some articles of clothing for his wife, the plaintiff; and, when the same were ready, the defendant refused to deliver them, until the amount already due from the said Debendra Nath Shaw was paid up in full. That this led to a quarrel between the plaintiff and the females of the defendant's house, and that the said Debendra Nath Shaw falsely brought a charge in the Police Court against the defendant, and that the defendant at the request of the presiding Magistrates having expressed his regret, the charge was withdrawn.

The defendant denied having ever used the slanderous expressions imputing unchastity to the plaintiff, who is related to the defendant: but admitted having, on one or two occasions [455] after the criminal case

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confridentially mentioned to some of his friends and relations, that he and his wife would never thereafter invite the plaintiff and her husband to their house, nor would they go over to the plaintiff's; beyond this he admitted none of the allegations of the plaintiff.

The defendant further submitted that the slanderous expressions alleged to have been used by him were not *per se* actionable, and therfore the plaint disclosed no cause of action against the defendant, and the suit should be dismissed.

1901, APRIL 11 and 12. The point as to whether the plaint disclosed any cause of action was argued as a preliminary point.

Mr. *Garth* and Mr. *J. G. Woodroffe*, for the plaintiff. The abusive language used by the defendant is defamatory, and *per se* actionable. The law of British India recognises personal insult conveyed by abusive langage as actionable without proof of special damage: the majority of the decisions of the Indian High Courts support my contention. See *Dawan Singh* v. *Mahip Singh* (1), *Parvathi* v. *Mannar* (2), *Kashiram Krishna* v. *Bhadu Bapuji* (3), *Jogeshwar Sharma* v. *Dinaram Sharma* (4); Alexander on Torts, 4th Edition, p. 263. The decision of the majority of the Full Bench in the case of *Girish Chunder Mitter* v. *Jatadhari Sadukhan* (5) does not deal with the present question. [HARINGTON, J.—Can you give me a case which shows that the English Law is inapplicable here?] Yes, the judgment of Ghose, J., in the case of *Girish Chunder Mitter* v. *Jatadhari Sadukhan*, (5) to which I have just referred.

Mr. *Sinha* and Mr. *Das* for the defendant.—The law laid down in the cases relied upon by the other side may apply to the mofussil, but not to the Presidency Towns. On the establishment of the Supreme Courts in the Presidency Towns of Calcutta, [456] Madras, and Bombay the Common and Statute Law in force in England was deemed to be introduced in these towns by the Charter of 1726, so far as it was applicable to local circumstances. See "Handbook of Indian Law," introduction, p. XIII; Tagore Lectures for 1872, pp. 58, 89. In the Presidency Towns the Common Law of England applies to all such cases, excepting those altered by subsequent legislature.

The doctrine of English Law that slander to give cause of action must give rise to special damage, has been acted upon by the Indian Legislature. See the Limitation Act, Sch. II, Art. 25.

[HARINGTON, J.—I will decide this question after the case has been gone into.]

Evidence in the case was then taken.

Mr. *J. G. Woodroffe* for the plaintiff.—The cases already cited by me, though they relate to the mofussil, deal with the broad principles of justice, equity, and good conscience; and there is a Calcutta case also (decided by Mr. Justice Pontifex), where the slander was published within the town of Calcutta. See *Nilmadhub Mookerjee* v. *Dookeeram Khottah* (6). With regard to the contention that special damage must be proved in the Presidency Towns, no authority has been cited. The parties are Hindus and a rigid caste system prevails amongst them; and to excommunicate one from his caste is about the greatest penalty that could be inflicted upon him in this country. There is no such thing in England, and therefore English cases should not be taken as a guide in this country.

(1) (1888) I. L. R. 10 All. 425.
(2) (1884) I. L. R. 8 Mad. 175.
(3) (1870) 7 Bom. H. C. A. C. 17.
(4) (1898) 2 C. W. N. 123 (Notes).
(5) (1899) I. L. R. 26 Cal. 653.
(6) (1874) 15 B. L. R. 161.

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[HARINGTON, J.—The plaintiff has not actually been outcasted, I suppose?]. No, My Lord, all we can shew is that there was an attempt to boycott her. See Odgers on Libel and Slander, 3rd Edition, pp. 342, 344; *Davies* v. *Solomon* (1), *Moore* v. *Meagher* (2).

When the Indian Limitation Act was passed, it was doubtful how far the English Law applied to these cases, and, therefore, that provision in Art. 25, Sch. II to the Act was introduced by **[457]** the Legislature. It, being an act of procedure, does not affect the present case.

Mr. *Sinha* (contra).—The question is whether there was any substantial grievance. There was a quarrel between the female members of the parties, and the words complained of, if used by the defendant at all, were mere expression of vulgar abuse; they were not defamatory *per se*, as held in the Full Bench case of *Girish Chunder Mitter* v. *Jatadhari Sadukhan* (3), and for those expression no special damage could be allowed. There was no loss of hospitality so far as the plaintiff was concerned, and no special damage has been proved by her. There is no evidence to show that the defendant ever repeated these slanderous expressions to any of the caste people of the plaintiff.

Special damage, which supports an action for slander, must amount to the loss of some material temporal advantage. The plaintiff has suffered no such loss. To damage must be caused by the slander itself and not by repetition of it by others. The plaintiff has no cause of action and the suit should be dismissed. I rely on *Roberts* v. *Roberts* (4), *Lynch* v. *Knight* (5), *Chamberlain* v. *Boyd* (6), *Dwyer* v. *Meehan* (7), *Rutherford* v. *Evans* (8), *Ward* v. *Weeks* (9), *Tunnicliffe* v. *Moss* (10), *Dixon* v. *Smith* (11), and *Clarke* v. *Morgan* (12).

Mr. *Garth*, in reply.—The plaintiff is entitled to succeed in this case. The slanderous words used by the defendant were not more expressions of vulgar abuse, but they amounted to serious imputations on the plaintiff's character. The Common Law of England is not applicable to the Presidency Towns **[458]** without exceptions; See the Table at p. XIII of Whitley Stoke's Collection of Statutes, Vol. I. The Common Law regarding Champerty and Maintenace, for instance, does not apply to the Presidency Towns; it is, therefore, not applicable to all cases considering the local circumstances of the country: See The *Advocate General of Bengal* v. *Ranee Surnomoye Dossee* (13), pp. 426, 429.

The evidence shews that some of the plaintiff's caste people have refused to come to her house; whether they believed in the imputations or not, the defendant has committed a grievous wrong. Slanderous expressions were uttered by the defendant, and they did cause to the plaintiff such damage as was held actionable in the case of *Davies* v. *Solomon* (1).

Car. adv. vult.

1901, MAY 1. HARINGTON, J.—The plaintiff in this case sues the defendant for slanders imputing unchastity to the plaintiff.

The defendant denies that he uttered the words in question, and alleges that, if spoken, they are mere vulgar abuse, and that in any case

(1) (1871) L. R. 7 Q. B. 112.
(2) (1807) 1 Taunt. 39.
(3) (1899) I. L. R. 26 Cal. 658.
(4) (1864) 33 L. J. Q. B. 249.
(5) (1861) 9 H. L. C. 577.
(6) (1883) L. R. 11 Q. B. D. 407.
(7) 5 Mews Digest. 672.
(8) (1892) 4 Car. & P. 74.
(9) (1830) 7 Bing 211.
(10) (1850) 3 Car. & Kir. 83.
(11) (1860) 5 H. & N. 450.
(12) (1877) 38 L. T. R. 354.
(13) (1869) 8 Moo. I. A. 387.

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they are not actionable without proof of special damage, and no special damage is alleged in the plaint.

The parties reside in adjoining house. A quarrel broke out between their respective families ; in the course of that quarrel the defendant said something, which caused the plaintiff to prosecute him before the Magistrate under ss. 500 and 504 of the Penal Code, on the ground that he had made imputations on her chastity. The defendant appeared to the summons, apologized and expressed his regret ; whereupon the charges were withdrawn.

It is alleged by the plaintiff that on the following day this dispute broke out again, and that the defendant not only uttered slanderous words about her in the presence of Sarat Chunder Shaw, Sada Nundo Shaw and Behary Lal Shaw, but also requested Sarat Chunder Shaw to warn his father not to accept from or extend hospitality to her on the ground that she was an unchaste woman.

[459] The slanderous words alleged to have been spoken in the presence of the Shaws were addressed to the plaintiff in Bengali ; translated into English they are : " You are a prostitute. I will publish before all the caste people that you are a prostitute. I took you to the garden-house at Kalighat, and had sexual intercourse with you." Sarat Chunder Shaw and Behary Lall Shaw depose, that they heard the defendant speak these words to the plaintiff ; the defendant on the other hand denies that he ever spoke the words and says, that if the imputations were true, he himself would be liable to be excommunicated.

In my opinion the evidence for the plaintiff is to be believed. In the first place it is very unlikely that the plaintiff who had just accepted an apology from the defendant, would re-open the matter without a fresh cause of offence, and moreover, when tested by cross-examination, she and the witnesses, who were called on her behalf, appeared to be telling a truthful story. The defendant on the other hand says he never abused the plaintiff on any occasion and suggests that the Magistrate was responsible for the apology he is said to have made in the Police Court That I do not believe. I have no doubt that he did abuse the plaintiff and that, when brought up in the Police Court, he did apologize and withdraw what he had said. In view of the way he has given his evidence as to the first quarrel, I am not disposed to give credit to his account, rather than to the plaintiff's account, of the second quarrel.

The speaking of the other slander complained of is deposed to by Sarat Chunder Shaw. I think words of the purport alleged were spoken, for the defendant admits in cross-examination that he used to go about saying he would have nothing to do with the plaintiff.

On the evidence, therefore, I find as a fact that the slanders complained of were spoken and published concerning the plaintiff.

It is asserted that they are mere vulgar abuse. In my opinion they are not. They convey a distinct imputation of unchastity, and allege specific charge of an act of immorality.

The next question is, has any special damage been alleged or proved by the plaintiff ?

[460] In the plaint no special damage is alleged : the 8th paragraph only alleges such general damages as would not support an action for slanderous words nor actionable *per se*, if brought in England.

The evidence which has been given is not such as would have

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supported any statement of special damage, which could have been framed. The plaintiff herself stated in examination in chief that Sarat Chunder Shaw, to whom the slander was published, has accepted her hospitality, since the slander, and that she herself had been invited out just as before. She did indeed state that Jibon Kristo Shaw, Hubbo Churn Shaw and some other person had not been to her house, but she did not connect them with the slanders in any way. As the case stood at the close of the plaintiff's examination-in-chief, there was no sort of evidence of any actual damage of any kind whatever. But the defendant cross-examined on this point and did elicit that a statement had been made in her hearing as to why those persons would not come to her house, and, when asked in re-examination what the statement was, the plaintiff said that it was this, that they had refused to come in response to an invitation, because of the imputations cast on her.

Sarat Chunder Shaw is the only person, who is called, who professes to have ceased going to the plaintiff's house, because of the slanders uttered by the defendant. But I disbelieve him on this point. First because he is flatly contradicted by the plaintiff; secondly, because he did not warn his father, as the defendant desired him to, and, as I believe, he would have done, if he had seen any reason for avoiding the plaintiff's house; thirdly because he admits he did not believe the slanders, and, if he did not believe them, he had no reason for avoiding the plaintiff's house. There is nothing to show that any words spoken by the defendant induced Jibon Kristo Shaw, Habbo Churn Shaw, or any other man to refuse the plaintiff's hospitality. My conclusion on this part of the case is that no actual damage has been proved to have been caused to the plaintiff, and no evidence moreover has been given to shew that conduct such as that imputed to the plaintiff would have subjected her to any penal or quasi-penal [461] consequences at the hands of the members of her caste. On the facts, therefore, I find that the defendant spoke and published the words complained of by the plaintiff, that those words conveyed the imputation that the plaintiff was unchaste; that they were spoken falsely and maliciously, but that they caused the plaintiff no actual damage whatever.

On these facts two contentions are raised by the plaintiff: (*i*) That the words convey an insult and that, for the mental distress caused by such insult, damages are recoverable, and (*ii*) that the words are defamatory and are actionable without special damage.

The first of these propositions was unsuccessfully propounded in this Court in the Full Bench case of *Girish Chunder Mitter* v. *Jatadhari Sadukhan* (1). I am bound by the decision of the majority of the Court in that case and with that decision I thoroughly agree.

There is no instance in English law in which an action on the case for mental distress caused by a criminal or tortious act will lie. A wrongful act causing death might subject the wrongdoer to punishment for manslaughter; it might cause the acutest mental distress to a parent or child of the deceased, but it gave no right of action at Common Law, and even under Lord Campbell's Act the damages recoverable for such a wrong are strictly limited to the actual pecuniary loss sustained, and do not include sentimental damages.

In *Wilkinson* v. *Downton* (2) the lie told must have caused the plaintiff the acutest mental distress, but it was the physical suffering

(1) (1899) I. L. R. 26 Cal. 653. (2) (1897) 2 Q. B. 57.

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consequent on nervous shock which formed the ground on which damages were claimed.

Although mental distress caused to the plaintiff may be taken into consideration in aggravation of damages, alone it gives no right to recover damages. The English Law on the subject was laid down in the House of Lords by Lord Wensleydale in these words: "Mental pain or anxiety the law cannot value, and does not pretend to redress, when the unlawful act [462] complained of causes that alone: see *Lynch* v. *Knight* (1); and that statement, since the Full Bench decision to which I have referred, express what is the law here.

The next question, namely, whether defamatory words imputing unchastity to a woman are actionable in this country without proof of special damage was left open by the Full Bench case, to which I have referred.

Under the Law of England as it stood prior to 1891 such words would not have been actionable without proof of special damage. Is that law to be applied in this country?

It is stated in Morley's Digest, Vol. I, p. XXII, that the Common Law of England, as it prevailed in 1726, is the law administered by the Supreme Courts, and that statement is treated as correct by Lord Kingsdown in the case of the *Advocate-General of Bengal* v. *Ranee Surnomoye Dassee* (2) in which he observes that "the English Law, civil and criminal, has been usually considered to have been made applicable to natives, within the limits of Calcutta, in the year 1726 by the Charter 13 Geo. I." This must be taken subject to certain limitations, many provisions of the English Law, as for example that under which bigamy is a felony, were obviously unsuitable to the natives of this country and were therefore not introduced.

But there is nothing unreasonable, having regard to the customs of this country, in holding that, that part of the Common Law of England which gave a person injured by slanderous words the right to recover damages in an action has been introduced. In my opinion it is by virtue of the Common Law of England introduced into Calcutta by the Charter of 1726 that the action is maintainable.

It may be laid down that under the English Law the malicious publication of any falsehood, oral or written, whether defamatory or not, if it is calculated to produce and does produce actual damage, gives a right of action to the person damaged by such publication: See *Ratcliffe* v. *Evans* (3).

[463] There are certain conditions under which the false and malicious publication of words gives a right of action notwithstanding that no actual damage is proved to have been produced. These are, when they are defamatory and are committed to writing, when they impute that the plaintiff is guilty of a crime, when they impute that he is suffering from infectious or contagious disease, or when they impute misconduct or incompetence to the plaintiff in the way of his business. These are the exceptions; in all other cases (except those arsing under the Slander of Women Act, 1891) the regular rule is followed, namely, that words to be actionable must be proved to have caused actual damage. The existence of the rule and the exceptions appear to have been recognized by the

(1) (1861) 9 H. L. C. 577, 598.
(2) (1868) 9 Moo. I. A. 387, 426.
(3) (1892) 2 Q. B. 524.

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Legislature of this country when the Limitation Act, Schedule 2, Art. 25 was passed.

Several cases were cited by the plaintiff, of which the most important is the case of *Parvathi* v. *Mannar* (1) in which it was held at Madras by Sir Charles Turner, C. J., and Muthusami Ayyer, J., that words imputing unchastity to a woman were actionable without proof of special damage. The learned Judges after pointing out that the cases on the subject are conflicting, condemn the rule of law, which enable damages to be recovered for the publication of written defamatory matter without proof of actual injury, while it calls for that proof in the case of oral slander ; and, in holding that the action will lie, say " the true test of the right to maintain the suit should be whether the defamatory expressions were sued at a time and under such circumstances as to induce in the person defamed a reasonable apprehension that his reputation has been injured, and to inflict on him the pain consequent on such a belief " and further they say that the person, who deliberately defames another, ought to be made responsible in damages for the mental suffering his wrong-doing occasions.

Kashiram Krishna v. *Bhadu Bavuje* (2) which was cited in support of the plaintiff's case, is expressed to be a suit in the mofussil between Hindus, to which English Law is not to be applied. *Jogeshwar Sharma* v. *Dinoram Sharma Bhattacharjee* (3) **[464]** is only cited from the law notes of the C. W. N., and the note is necessarily too much compressed to give the reasons for the judgment.

In *Dawan Singh* v. *Mahip Singh* (4) the very lengthy judgment, which was delivered by Mahmood, J., turned on the question, whether abuse was actionable.

Of the cases cited therefore, the only one, which really supports the plaintiff's case, is that which was decided by the Madras High Court (5), and when the test laid down in that case is examined, it is found to involve the proposition that damage ought to be recoverable for mental distress alone, and that is a proposition, which has been shown by the Full Bench decision, to which I have referred, to be untenable.

But ought this particular class of slander, *i.e.*, that imputing unchastity to a woman, to be added to the list of exceptions to the general law and to be held to be actionable, where no damage is proved to have been caused?

It is urged that this should be so, because English Judges in certain cases, notably *Lynch* v. *Knight* (6) and *Roberts* v. *Roberts* (7) have made strong comments on the unsatisfactory state of the English Law. No doubt the law in England previous to the passing of the Slander of Women Act was unsatisfactory : the Courts had placed a very narrow construction on what was the special damage necessary to support the action, and, unless the slanderous words were reduced into writing, the criminal law afforded no redress. But those reasons do not apply here ; the slanderer can be punished criminally, whether his slanders are reduced into writing or not. A successful prosecution in the Criminal Courts would clear the character of any slandered lady as effectually, and probably more effectually than it would be cleared, if she were entitled to claim pecuniary compensation for damage, which she was uuable to prove she had suffered.

(1) (1884) I. L. R. 8 Mad. 175.
(2) (1870) 7 Bom. H. C. A. C. 17.
(3) (1893) 2 C. W. N. 123 (Notes).
(4) (1888) I. L. R. 10 All. 425, 456.
(5) (1884) I. L. R. 8 Mad. 175.
(6) (1861) 9 H. L. C. 577.
(7) (1864) 33 L. J. Q. B. 249.

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[465] Where it is proposed to depart from the rules of English Law, which have been introduced into this country, it must be shown that those rules, if adhered to in this country, will work an injustice or hardship. Here no injustice is worked by an adherence to those rules, because in cases where the person aggrieved is unable to prove that he has suffered actual damage, he can call in the criminal law to punish the wrong-doer. *Prima facie* there is nothing repugnant to justice, equity and good conscience in calling on a person, who is claiming pecuniary compensation for damage caused by a wrongful act, to prove that some damage has been caused to him by the act of which he complains.

In my opinion the plaintiff has failed to show that the rules of English Law applicable to the present case ought to be departed from, and, inasmuch as the words are not *per se* actionable and no damage in fact has been alleged or proved, the action must be dismissed with costs.

Attorney for the plaintiff : Babu *A. K. Mitter*.

Attorneys for the defendant : Messrs. *Thakur and Bysack*.

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APPELLATE CIVIL.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice and Mr. Justice Banerjee.

SURJA KUMAR DUTT (*Judgment-debtor*) *v.* ARUN CHUNDER ROY AND ANOTHER (*Decree-holders*).* [3rd May, 1901.]

Limitation Act (*XV of* 1877), *ss.* 7 *and* 8—*Minor—Decree-holder—Civil Procedure Code* (*Act XIV of* 1882), *s.* 231.

When only one of several joint decree-holders is a minor, s. 7 of the Limitation Act saves an application for execution by the minor decree-holder from being barred by limitation.

[466] *Seshan* v. *Rajagopala* (1), *Narayanan Nambudri* v. *Damodaran Nambudri* (2) dissented from.

Govindram v. *Tatia* (3), *Zamir Hassan* v. *Sundar* (4) followed.

THIS appeal arose out of an application for execution of a decree for partition. On the 13th March 1890 a decree, directing the parties to get possession of *sehams* and compensation according to the report of the Ameen, was made. The plaintiffs took out execution on the 10th December 1890, against the defendants Nos. 1, 2 and 3. They made several other applications for execution and the last one was made on the 13th March 1896. In that execution, the plaintiffs credited Rs. 9 and odd, which were due by them to defendants Nos. 1, 2 and 3. The said sum was credited on the 21st March 1896, when the compensation due to defendants Nos. 1, 2 and 3 became finally settled. On the 18th November 1897 the defendants Nos. 2 and 3 made an application for execution against some other defendants. This petition was dismissed by the Court on the ground that a copy of the Ameen's report was not filed, and the question of limitation, which was raised by some of the judgment-debtors, was left undecided. On the 13th August 1898 the present application for execution was made by defendants Nos. 2 and 3. When the decree was

* Appeal from Order No. 357 of 1900, against the order of G. Gordon, Esquire, District Judge of Dacca, dated the 28th of May 1900, affirming the order of Babu Sudhangshu Bhusan Roy, Subordinate Judge of that District, dated the 24th of April 1899.

(1) (1889) I. L. R. 13 Mad. 236.
(2) (1893) I. L. R. 17 Mad. 189.
(3) (1895) I. L. R. 20 Bom. 888.
(4) (1899) I. L. R. 22 All. 199.