1901

GREY v. WOOGRAMOHUN THAKUR.

waste lands, and that they went there to cultivate the bhadoi crops. They certainly put forward the case that Woogramohun being a joint proprietor, and the land lying waste, he was not infringing any rule of law or showing any contempt to the Court by cultivating the land, and in his letter which he addressed to Mr. Grey, as well as in his affidavit, he shows himself willing to indemnify the other co-sharers for any loss that they may sustain by his act or, if so willing, they might participate with him in any profit, which he may derive.

Having regard to the nature of the statements in this case and the contradictory character of the affidavits on the two sides, it does not seem to us expedient that we should exercise the extraordinary jurisdiction which is vested in this Court to proceed in contempt against Woogramohun Thakur. If the man had been a total outsider, or if the affidavits of Hari Chand Ghose and Sharada Prasad Singh had contained statements which were beyond the shadow of a doubt, we should have considered the matter from a different standpoint.

On the whole we are of opinion that the Rule ought to be discharged, and we accordingly discharge it, but having regard to the circumstances of the case we make no order as to costs.

M. N. R. *Rule discharged.*

Before Mr. Justice Hill and Mr. Justice Harington.

1901
July 4, 26.

METHURAM DASS - - - - - - - - - PLAINTIFF.

v.

JAGGANNATH DASS - - - - - - - - - DEFENDANT.*

Defamation—Damages—Action for damage—Investigation—Police Officer—Witnesses—Privilege.

No action for damages lies against a person for what he states in answer to questions put to him by a police officer conducting an investigation under the provisions of the Criminal Procedure Code. Public policy requires that an action should not be brought against such a witness as it does in the case of one giving evidence in an ordinary Court of Justice.

* Appeal from Appellate Decree No. 236 of 1899 against the decree of Babu Surbeswar Mozumdar, Additional Subordinate Judge of Jalpaiguri, dated the 10th of October 1898, reversing the decree of Babu Kanti Chunder Mukerjee, Munsif of Jalpaiguri, dated the 11th of February 1898.

1901

METHURAM DASS v. JAGGANNATH DASS.

THE plaintiff was arrested by the police and taken to the house of the defendant, and, in the course of the investigation held there, the investigating officer orally examined the defendant as the person supposed to be acquainted with the facts of the case, and in answer to questions put to him he stated that the plaintiff with others had committed dacoity in his house. The plaintiff instituted this suit for damages for slander against the defendant in the Court of the Munsif of Jalpaiguri, who gave a decree in favour of the plaintiff. On appeal to the Subordinate Judge he held, following the rulings in *Queen-Empress* v. *Govinda Pillai* (1) and *Dawan Singh* v. *Mahip Singh* (2), that the statement in question was privileged and therefore not actionable. The plaintiff thereupon appealed to the High Court.

Babu *Sarat Chunder Roy Chowdry* on behalf of the appellant.

Moulvi *Sirajul Islam* on behalf of the respondent.

JULY 26. The judgment of the High Court (HILL and HARINGTON, JJ) is as follows :—

The sole question in this appeal is whether the defendant who, in answer to a question put to him by a police officer conducting an investigation under the provisions of Act X of 1882, stated that the plaintiff was concerned in the commission of the crime then being investigated, can be made liable in an action for damages for words so spoken.

The learned Additional Subordinate Judge has held, on the authority of *Queen-Empress* v. *Govinda Pillai* (1), that *no action* would, under such circumstances, lie, and, we think, that his decision is correct. A person, as was pointed out in that case, examined by a police officer conducting an investigation under Act X of 1882, was bound by s. 161 of the Act to answer truly all questions put to him, and on that ground the learned Judges considered that he was entitled to the same protection as that extended to witnesses in a Court of Justice. This view

(1) (1892) I. L. R. 16 Mad. 235.
(2) (1883) I. L. R. 10 All. 425.

1901

METHURAM DASS v. JAGGANNATH DASS.

derives support from the cases of *Goffin* v. *Donnelly* (1) and *Dawkins* v. *Lord Rokeby* (2). In the former the Court of Queen's Bench held that a person giving evidence before a select committee of the House of Commons appointed to enquire into the circumstances attending the suspension of the certificate of the plaintiff, who was a school master, was absolutely privileged in respect of the evidence he gave. "For the purposes of such enquiries" it was said, "committees are appointed and require the attendance of witnesses. If persons so required to attend did not attend they would be committed for contempt. If they do attend they must answer the questions asked of them and may be examined on oath. The evidence given is, therefore, as much given under compulsion as in the case of a Court of law." So in *Dawkins* v. *Lord Rokeby* (2), it was held that statements made by a witness before a Military Court of Inquiry were priviledged in the same way as evidence given in a Court of Justice. Such a Court is not, however, a judicial body, nor can it administer an oath, but officers of the army are compellable to attend such Courts, if required to do so by competent military authority and to give evidence, and it was upon this ground that the answer of the Judges to the question proposed to them by the Lord Chancellor and adopted by the House of Lords proceeded. The Lord Chief Baron, in answering the question proposed, after referring to the immunity enjoyed by witnesses in Courts of Justice in respect of statements by them disparaging to another and to the reason for the rule, went on to say: "In the present case it appears in the bill of exceptions that the words and writing complained of were published by a military man bound to appear and give testimony before a Court of Inquiry, all that he said and wrote had reference to that enquiry: and we can see no reason why public policy should not equally prevent an action being brought against such a witness as against one giving evidence in an ordinary Court of Justice." And the Lord Chancellor in summarising the circumstances of the case said: "Your Lordships have it in the bill of exceptions that it was an

(1) (1881) L. R. 6 Q. B. D. 307.
(2) (1875) L. R. 7 H. L. 744.

enquiry connected with the discipline of the army; it was an enquiry warranted by the Queen's Regulations and Orders for the army, it was called for by the General Commanding-in-Chief in pursuance of those regulations; and the defendant in the action was called upon that enquiry as a witness, as a person who was required to make statements relevant to the enquiry which was then being conducted, and it was in the course of that enquiry that these statements were made."

In the present case the investigation was required by law; it was conducted under the provisions of the law, it was ancillary to the administration of justice. The defendant was bound by law to answer all questions put to him by the police officer conducting the investigation, and was punishable if he answered untruly and what was said by him had reference to the matter under investigation. Virtually the only distinction between his position and that of an ordinary witness arises from the fact that his statement was not made in a Court of Justice, and we see no reason accordingly, to use the language of the Lord Chief Baron cited above, why public policy should not equally prevent an action being brought against him as against a witness in an ordinary Court of Justice.

We think accordingly that the suit was not maintainable, and that the appeal fails and must be dismissed with costs.

S. C. B.

APPELLATE CRIMINAL.

Before Mr. Justice Ghose and Mr. Justice Brett.

KALIL MUNDA AND OTHERS . . . . . APPELLANTS.

v.

KING-EMPEROR . . . . . RESPONDENT.*

1901 *July* 11, 12 *and* 19.

Conspiracy—Abetment of conspiracy, what amounts to evidence of—Attempt to murder—Mischief by fire—Indian Evidence Act (I of 1872) s. 10—Penal Code (Act XLV of 1860) ss. 107, 108, 109, 117, 307 and 436.

Conspiracy consists in a combination and agreement by persons to do some illegal act or to effect a legal purpose by illegal means, and the

* Criminal Appeal No. 184 of 1900.