CALCUTTA HIGH COURT

Satis Chandra Ckakrabarti

Vs

Ram Dayal De

(Ashutosh Mookerjee, C.J. E Fletcher and Richardson, JJ. Walmsley and Buckland, JJ.)

13.07.1920

JUDGMENT

Ashutosh Mookerjee, Acting C.J.

1. On the 11th July 1919 Satis Chandra Chakrabarti, the petitioner in the present Rule,made an application to this Court and prayed that disciplinary action might be taken against Mr. Ramdayal De. a Vakil of this Court, who had acted on behalf of one Chandra Kumar Chakrabarti with whom he had been involved in a protracted litigation, It is not necessary for our present purpose to narrate the history or review the progress of that litigation; it is sufficient to state that the application made by the petitioner contained grave charges of misconduct against Mr. De. The application was supported by an affidavit which recited that the facts mentioned in the petition were true to the knowledge of the deponent except those contained in paragraphs 10, 25 and 27, and that a part of paragraphs 4, 47 and 50 were true to his information and belief. The application was heard in the first instance by Fletcher and Duval, JJ. On the 17th July 1919 the matter was referred to the Government Pleader for inquiry and report. On the 25th July, Mr. De was called upon to submit an explanation within threeweeks, which he did, on the 10th November 1919. The question was thereafter considered by Sanderson, C.J., and Flecther, J., who, on the 3rd December 1919, came to the conclusion that no disciplinary action could be taken upon the application. On the 15th March 1920 Mr. De moved this Court for sanction to prosecute Satis Chandra Chakrabarti for offences under Sections 181 and 193, Indian Penal Code, alleged to have been committed by him in respect of the statements made in paragraphs 52 and 22 of the application to this Court on the 11th July 1919. This application for sanction was refused by Sanderson, C.J., and Walmsley, J. Meanwhile, on the 24th February 1920, Mr. De had lodged a complaint in the Court of the Chief Presidency Magistrate against Satish Chandra Chakrabarti with a view to prosecute him for an offence under Section 500, Indian Penal Code, in respect of the following nine statements selected from the petition of the 11th July 1919:

(1) That the said Vakil, when the suit No. 53 of 1910 (Probate Case) was pending in the Judge's Court at Chittagong after remand, offered money to Prasanna Kumar Singh, the Kabiraj, the witness No. 1, who deposed on 20th July 1914 and Radha Govinda Bhattacharyya, witness No. 9, who deposed on 23rd July 1914, to depose falsely, and paid Probhat Chandra Bose, witness No. 10, to depose falsely and strongly on behalf of his side.

(2) That the said Vakil, since the institution of the pending Revocation Case No. 11 of 1918, frequently goes to Chittagong and there bribed some of the witnesses and attempted to bribe the others, amongst Romjan Ali, Dalilar Rohman, Uma Charan Dhupi, Achlam Khan, Sarada Kumar Dey, who were served with summonses. He also tried to raise a few witnesses on payment of money to adduce false evidence against the petitioner.

(3) That Babu Ramdayal De, who was always bent upon wrongly getting hold of the property of the testator, instigated the said decree-holders (Ramdayal Pal and Bhairab Chandra De) to execute their decree for about Rs. 6,000, knowing well that it would not be probable for your petitioner to pay up at once such a large amount, in which case Babu Ramdayal De would be able to purchase some of the properties of the testator and father of the petitioners and other executors at a small price.

(4) That Babu Ramdayal De, intentionally, and, in order to win the case, misprinted in the paper-book (of Appeal from Original Decrees Nos. 438 and 580 of 1914) many other things (that is, than those referred to in paragraphs 44 and 45) which were material for the case.

(5) When the judgment of the Honourable High Court was forwarded to the District Judge, it transpired that the names of Babu Ramdayal De and the first point of appeal decided were of different ink and of different hand, thereby probably Babu Ramdayal De tried to omit his name from list of appellant's Pleaders and to raise a suspicion in the mind of the District Judge that the petitioner and other executors were not appointed executors though the first point decided in favour of the petitioner.. and the petitioner believes it was managed by Babu Ramdayal De, the said judgment not to be forwarded with the original record, though there was an urgent order for Bending the record to the District Judge in that judgment itself.

(6)....it is his duty to teach the witnesses and see the record and draft big volumes of false application.

(7) That petitioner understood that every Court now a days is very liberal to the reduction of rate of interest and grant easy installment to the debtors, but the petitioner is so unfortunate that he is unable to get any consideration of the other Court. So the petitioner believes that it is by the influence of Babu Ramdayal De, Vakil, High Court.

(8) That Babu Ramdayal De came down to Mirsarai and opposed the petitioner's agents and peons from realising rent during the expiry of the year 1280 M.E. and then came down to Chittagong, stayed there three or four days, during which, through his agent Indra Singh, he intimated with the witnesses of the pending Revocation case and induced them with payment and offering money to give false evidence against the petitioner, one of the witnesses Nisi Chandra Dey who also told the petitioner the story.

(9) That there is nothing impossible for Babu Ramdayal De, so the petitioner most humbly prays for an order for safe custody of his letters, envelopes Exhibits E, F, L, M, S, T, and U, V and W and the original note written by Babu Surendea Nath Das which is exhibited and marked P, and for an urgent order to keep some of the paper books in Appeals NOR, 580 and 438 of 1914 in the safe custody.

2. It may be mentioned here that one of these statements, namely, No. 8, is one of the two statements included in the subsequent application by Mr. De for sanction to prosecute Satis Chandra Chakrabarti, Statements Nos. 4, 6 and 9 were, but statements Nos. 1, 2, 3, 5 and 7 were not, covered by the affidavit appended to the application of the 11th July 1919. On the 3rd May 1920, Satis Chandra Chakrabarti applied to this Court and obtained the present Rule with a view to quash the proceedings in the Court of the Chief Presidency Magistrate on the ground that the alleged defamatory statements were absolutely privileged, as they were contained in a petition presented to this Court in the exercise of its disciplinary jurisdiction. The Rule was argued in the first instance before Walmsley and Buckland, JJ., who were of opinion that in view of the importance of the question involved, namely, whether statements contained in an application to this Court upon which a charge of defamation is based are absolutely privileged, it should be considered by a Special Bench. The present Bench has accordingly been constituted, with the concurrence of the Full Court, to hear the Rule.

3. The determination of the matter in controversy depends upon the true construction of Section 499, Indian Penal Code, which contains four explanations and ten exceptions: Channing Arnold v. Emperor . No reference need be made to the explanations, as there can be no reasonable doubt as to the meaning and effect of the imputations contained in the statements. Nor need we consider the scope of any of the exceptions, except the eighth and the ninth which alone bear upon the question under consideration. Consequently, the statutory provision relevant for the decision of this matter may be formulated as follows:

Whoever by words either spoken or intended to be read or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said,

except in the cases hereinafter excepted, to defame that person.

Eighth Exception--It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustrations If A. in good faith accuses Z. before a Magistrate; if A. in good faith complains of the conduct of Z., a servant, to Z.'s master; if A. in good faith complains of the conduct of Z., a child, to Z.'s father--A. is within this exception.

Ninth Exception,--It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

Illustrations.

(a) A., a shopkeeper, says to B, who manages his business 'Sell nothing to Z., unless he pays you ready money, for I have no opinion of his honesty.' A. is within the exception, if he has made this imputation on Z. in good faith for the protection of his own interest.

(b) A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z, Here, if the imputation is made in good faith and for the public good, A, is within the exception.

4. It is indisputable that, unless the case can be brought within either of the two exceptions just set out, the petitioner must be taken to have defamed Mr. De, as the statements embodied in his application to this Court were of such a character that he must have known that they would harm his reputation. We have, consequently, to examine the provisions of the two exceptions, but it is plain that neither of them formulates any rule of absolute privilege. The eighth exception refers to accusations preferred in good faith to an authorised person. The ninth exception refers to imputations made in good faith by persons for protection of their interest or the public good. It is thus clear that, to take a case out of the primary rule and to bring it within either of the exceptions, good faith on the part of the person who makes or publishes the imputation must be established. We cannot in this connection overlook the illustration to the eighth exception, although we are not unmindful that an illustration is useful so far as it helps to furnish some indication of the presumable intention of the Legislature and does not bind the Courts to place a meaning on the section which is inconsistent with its language: Dubey Sahai v. Ganeshi 1 A. 34 at p. 36 (F.B.) : 1 Ind. Dec. (N.S.) 23; Qusen Empress v. Fakirappa 15 B. 49 at p. 496 : 8 Ind. Dec. (N.S.) 333; Koylash Chunder Ghose v. Sonatun Chung 7 C. 132 at p. 135 : 8 C.L.R. 281 : 4

Shome L.R. 14 : 5 Ind. (SIC) 642 : 3 Ind. Dec, (N.S.) 635. Reference may here be usefully made to the following observations of Lord Shaw in the judgment of the Judicial Committee in Mahomed Syedol Ariffin v. Yeoh Ooi Gark :

It is the duty of a Court of Law to accept, if that can be done, the illustrations given as being both of relevance and value in the construction of the text. The illustrations should in no case be rejected because they do not square with ideas possibly derived from another system of jurisprudence as to the law with which they or the sections deal. And it would require a very special case to warrant their rejection on the ground of their assumed repugnancy to the sections themselves. It would be the very last resort of construction to make any such assumption. The great usefulness of the illustrations, which have, although not part of the sections, been expressly furnished by the Legislature as helpful in the working and application of the Statute, should not be thus impaired.

5. In the present instance, however, there is no conflict between the exception and the illustration which states that a person who in good faith accuses another before a Magistrate is allowed the benefit of the exception. In view of the plain language of the eighth and ninth exceptions, it is really difficult to see how absolute privilege can be claimed in respect of statements made by the petitioner in his application to this Court for disciplinary action against Mr. De; the Magistrate is bound to investigate the question of good faith which is expressly made an essential ingredient by both the exceptions.

6. Mr. Bose, who appeared in support of this Rule, fully realised this difficulty and was constrained to take recourse to what might well be tailed a desperate argument. He did not, indeed, maintain the view that the provisions of the Indian Penal Code should be construed in different ways within and beyond the limits of a Presidency Town; but be attempted to support the position that the liability of the petitioner depends, not on the provisions of the Indian Penal Code alone, but on those provisions as modified by the Common Law of England. His argument in substance was that, to determine the criminal liability of a person in Calcutta, we must investigate the rule of the Common Law of England on the subject and engraft it on the Indian Penal Code, with the result that where the two systems are not in agreement, the Common Law of England should prevail. Mr. Bose was not (SIC) to recognise that this argument is opposed to the preamble, as also the provisions of Section 1 and Section 2 of the Indian Penal Code. The preamble shows that the object of the Legislature was to provide a general Penal Code for British India. Section 1 provides that the Code shall take effect throughout the whole of the territories which were or might become vested in Her Majesty under the Government of India Act, 1858, which has since been replaced by the Government of India Act, 1915. Section 2 explicitly lays down that every person shall be liable to punishment under the Code and not otherwise for every

act or omission contrary to the provisions thereof of which he shall be guilty within the territories vested in Her Majesty; these words repeal all former laws for the punishment of every offence which is made punishable by the Indian Penal Code. These provisions clearly militate against the contention put forward in support of the Rule. As a last resort, Mr. Bose relied upon Section 5 which provides that nothing in the Code is intended to repeal, vary, suspend or affect any of the provisions of Statute 3 and 4, Will, IV, C. 85, or of any Act of Parliament passed after that Statute in anywise affecting the East India Company or the said territories or the inhabitants thereof; or any of the provisions or any Act for punishing mutiny and desertion of officers and soldiers in the service of Her Majesty or of any special or local law." Mr. Bose, however, did not explain how this provision in any way assisted his argument. It need not be disputed that the effect of Section 5 is to qualify the general repeal prescribed by Section 2. The two sections taken together declare that offences defined by special and local laws continue to be punishable as before; in other words, all acts or omissions contrary to the provisions of the Code itself or of the provisions of special and local laws end the other laws enumerated in Section b, and these alone and none others, are punishable as offences, [See the judgment of Collett, J. Proceedings 22nd December 1866 3 M.H.C.R. (App) XI at p. XVII]. But our attention has not been invited to any of the provisions of the Government of India Act, 1833, which are saved by Section 5 and which may be supposed to have any bearing, direct or indirect, on the argument advanced in support of the Rule. The provisions which relate to the legislative powers of the Governor-General in Council (Sections 43, 44, 45, 46, 84 and 85) or which maintain unaffected the right of Parliament to legislate (Section 51) clearly do not bear on the question we are called upon to consider. Nor is any light thrown on the matter by Sections 9 and 10 of the Indian High Courts Act (24 and 25 Vict., C. 101) which define the jurisdiction and powers of the Indian High Courts, and embody the following provisions:

9. Each of the High Courts to be established under this Act shall have and exercise all such Civil, Criminal, Admiralty and Vice-Admiralty, Testamentary, Intestate and Matrimonial Jurisdiction, Original and Appellate, and all such powers and authority for, and in relation to, the administration of justice in the Presidency for which it is established, as Her Majesty may, by such Letters Patent as aforesaid, grant and direct, subject, however, to such directions and limitations as to the exercise of original, civil, and criminal jurisdiction beyond the limits of the Presidency Towns may be prescribed thereby; and save as by such Letters Patent may be otherwise directed and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor General of India in Council, the High Court to be establish-ed in each Presidency shall have and exercise all jurisdiction and every power and authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under this Act at the time of the abolition of such last mentioned Courts.

10. Until the Crown shall otherwise pro-vide under the powers of this Act, all jurisdiction now exercised by the Supreme Courts of Calcutta, Madras, and Bombay, respectively over inhabitants of such parts of India as may not be comprised within the local limits of the Letters Patent to be issued under this Act establishing High Courts at Fort William, Madras and Bombay, shall be exercised by such High Courts respectively.

7. Section 10 was repealed by Section 2 of 28 and 29 Vict., C. 15, Section 9, which has now been replaced by Section 106 of the Government of India Act, 1915, preserves to the High Court all jurisdiction and every power and authority vested in any of the Courts abolished by the High Courts Act, 1861, that is, the Supreme Court and the Court of Sudder Dewani Adalat and Sadar Nizamat Adalat, mentioned in Section 8. This provision, however, is made expressly subject to the legislative powers of the Governor-General in Council which is farther emphasised by the provision of Clause 44 of the Letters Patent recently extended in scope by the amendment of the 11th March 1919:

And We do further ordain and declare that all the provisions of these our Letters Patent are subject to the legislative powers of the Governor General in Legislative Council, and also of the Governor-General in Council under section seventy-one of the Government of India Act, 1915, and also of the Governor-General in cases of emergency under section seventy-two of that Act, and may be in all respects amended and altered thereby.

8. The phraseology used in Section 9 cannot possibly mean that the High Court is to apply the Common of England, in the exercise of the criminal jurisdiction vested in it. This is placed beyond dispute by the Letters Patent mentioned in the section. We need refer only to Clause 30 of the Letters Patent of 1855 which replaces Clause 29 of the Letters Patent of 1862.

30. And We do further ordain that all persons brought for trial before the said High Court of Judicature at Fort William in Bengal, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of Appeal, reference or revision, charged with any offence for which provision in made by Act No. XLV of 1860 called the 'Indian Penal Code' or by any Act amending or excluding the said Act, which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

9. It may be noted that the words "or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents" were introduced for the first time in Clause 30 of the Letters Patent of 1865, while the words 'subject nevertheless to such alterations, modifications and additions in and to such Code as may have been or may be prescribed by any Acts or Regulations made by the Governor-General in Council' which occurred in Clause 29 of

the Letters Patent of 1862 were not reproduced in Clause 30 of the Letters Patent of 1865. Clause 30 of the Letters Patent which is now in force makes the argument entirely untenable that the High Court is not to ad-minister criminal law as contained in the Indian Penal Code but is to engraft thereon the rules of the Common Law of England.

10. It is, in our opinion, indisputable that all persons brought before the High Court for trial in the exercise of its original criminal jurisdiction, or in the exercise of its jurisdiction as a Court of criminal appeal, reference or revision, if charged with an offence under the Indian Penal Code, shall be liable to punishment under that Code and not otherwise. This does not militate against the view that the High Court has jurisdiction, like the Supreme Court, to punish for contempt of Court, which, as was pointed out by Sir Barnes Peacock in Surendra Nath Banerjee v. Chief Justice of Bengal 10 C. 109 : 10 I.A. 171 : 4 Sar. P.C.J. 474, 5 Ind. Dec. (N.S.) 76, is not an offence under the Indian Penal Code: "it is an offence which by the Common Law of England is punishable by the High Court in a summary manner by fine or imprisonment or both; that part of the Common Law of England was introduced into the Presidency Towns when the late Supreme Courts were respectively established by the charters of justice. The High Courts in the Presidencies are superior Courts of Record and the offence of contempt and the powers of the High Court for punishing it are the same in India as in England, not by virtue of the Penal Code in British India and the Code of Criminal Procedure, 1882, but by virtue of the Common Law of England. McDermott v. Judges of British Guiana (1868) 5 Mon. P.C. (N.S.) 466 at p. 497 : 2 P.C. 341 : 38 L.J.P.C. 1 : 20 L.T. 47 : 17 W.R. 362 : 16 E.R. 590." It is not necessary for our present purpose to deal elaborately with the question of the jurisdiction of this Court to punish for contempt of Court; such power was undoubtedly possessed by the Supreme Court and may be exercised by this Court either as a power inherited from that Court or as inherent in the Court as a Court of Record and the exercise of the power is not restricted by the provisions of Clause 30 of the Letters Patent [See Governor of Bengal Legal Remembrancer v. Moti Lal Ghosh 20 Ind. Cas. 81 : 41 C. 173 at p. 176 : 18 C.L.J. 452 : 14 Cr. L.J. 321 : 17 C.W.N. 1253 and Amrita Bazar Patrika, In the matter of (Moti Lal Ghose, In re) 45 Ind. Cas. 338 : 45 C. 169 : 26 C.L.J. 459 : 21 C.W.N. 1161 : 19 Cr. L.R. 530]. Similarly, Section 9 of the Indian High Courts Acts, 1861, may be deemed to have vested in the High Court, the power and authority which might be exercised by the Supreme Court beyond the limits of the Presidency Towns as indicated by the observations of Peel, C.J., Maharanee of Lahore, In the matter of (1848) Taylor 428 : 2 Ind. Dec. (N.S.) 256. Here, again, however, the exercise of the jurisdiction is subject to the provisions of the Letters Patent and is without prejudice to the legislative powers of the Governor General in Council, Consequently, from whatever point the matter may be examined, there is no escape from the position that the petitioner in the present Rule is subject to the operation of Section 500, Indian Penal Code and other relevant provisions, if any, of the Indian Penal Code; the measure of

his liability cannot be tested by reference to the rules recognised by the Common Law of England.

11. We may point out that the conclusion we have reached is not contradicted by what is known of the history of the legislation on the subject. We are not unmindful that such reference to the history of legislation can only be legitimately made, as was done by the Judicial Committee in Maharajah Ishuree Persad Narain Sing v. Lal Chutterput Sing 3 M.I.A. 100 at p. 130 : 6 W.R.P.C. 27 : 1 Sar. P.C.J. 245 : 18 E.R. 435 and Brown v. McLachlan (1872) 5 P.C. 443 at p. 450 : 42 L.J.P.C. 18 : 21 W.R. 277 : 9 Moo. P.C. (N.S.) 384 : 17 E.R. 559, when reasonable doubt is entertained as to the construction of a Statute: the operation may, however, be easily carried too far, and may, in the case of codification of Acts, lead to results which have been emphatically condemned in decisions of the highest authority; see, for instance the observations of Lord Herschell in Bank of England v. Vagliano (1891) A.C. 107 : 60 L.J.Q.B. 145 : 64 L.T. 353 : 39 W.R. 657 : 55 J.P. 676, of Lord Watson in Robinson v. Canadian Pacific Railway Co. (1892) A.C. 481 : 61 L.J.P.O. 79 : 67 L.T. 505 and of Lord Macnaghten in Narendra Nath, v. Kamalbasini Dasi 23 C. 563 : 23 I.A. 18 : 6 Sar. P.C.J. 667 : 6 M.L.J. 71 : 12 Ind. Dec. (N.S.) 374. The proper course is, in the first instance, to examine the language of the Statute, to interpret it, to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law; to begin with an examination of the previous state of the law on the point, is to attack the problem on the wrong end; and it is a grave error to force upon the plain language of the section an interpretation, which the words will not bear, on the assumption of a supposed policy on the part of the Legislature not to depart from the rules of the English Law on the subject. In the present instance, however, a reference to the history of the Indian Penal Code, not only does not support the theory of such a policy, but shows clearly an intention on the part of the Legislature to deviate in many respects from the rules of the English Law on this particular topic. This is manifest from an analysis of note R, appended to the draft of the Indian Penal Code prepared by the Indian Law Commissioners (Macaulay, Macleod, Anderson and Millett) and submitted to the Governor-General in Council on the 14th October 1837. The Commissioners not only did not faithfully adhere to the rules of the English Common Law, but in some respects, framed provisions which were at variance therewith, as also with the French Code and the Code of Lousiana. The Commissioners further in-tended that provision should be made, in the Code of Procedure, for rules for pleading in cases of defamation. The subsequent reports on the draft Code by the Indian Law Commission (Cameron and Eliott) on the 5th November 1846, and 24th June 1847 devote one entire chapter (Chapter XXV, paragraphs 360-414) to the subject of defamation. It is sufficient to stats that there is no indication of an intention to adhere to the rules of the English Law on the subject: on the other hand, the Commissioners depart from those rules in many respects, although they had before them the Digest prepared by the English Criminal

Law Commissioners. In a subsequent report submitted by the Indian Law Commissioners (Cameron and Eliott) on the 1st February 1848, they embodied a scheme of provisions and rules for the administration of criminal justice according to the Penal Code. To this scheme, they appended forms of indictment; Form No. 66 which refers to defamation sets out the plea of "not guilty of defamation" on the ground that the imputation had been made in good faith for the public benefit. These rules for pleading do not appear, however, to have been ever adopted by the Legislature. We do not rely on this history of the composition of the Indian Penal Code with a view to interpret its provisions, but we refer to it only to show how unsafe it would be to interpret the sections of the Code on the erroneous assumption that the framers did not intend to depart from the rules of the Common Law.

12. As a last resort, Mr. Bose has argued that if the language of Section 499, Indian Penal Code, militates against his contention, there is a respectable body of judicial opinions which support his view of absolute privilege. Before we examine these decisions, 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. This fundamental distinction, as will presently appear, has not always been borne in mind. The position then is that questions relating to civil liability for damages for defamation must be determined with reference to either the rules of English Common Law where they are shown to be applicable Mayor of Lyons v. East India Co. 1 M.I.A. 175 : 1 Moo. P.C. 175 : 3 State Tr. (N.S.) 617 : 1 Sar. P.C.I. 107 : 18 E.R. 66 : 12 E.R. 782 and with reference to principles of justice, equity and good con-science in all other cases. The principle that, in all cases for which no specific statutory directions are given, Judges should act according to justice, equity and good conscience, was expressly formulated in Section 93 of the Administration of Justice Regulation promulgated by the Governor-General in Council on the 5th July 1781. The rule was thereafter successively reproduced in Section 21 of Regulation III of 1793, in Section 24 of the Bengal Civil Courts Act, 1871, and in Section 37 of the Bengal Civil Courts Act, 1887. Now, the decision of a case according to the principles of justice, equity and good conscience has generally meant decision according to the principles of English Law applicable to a similar state of circumstances. This was justified in Dada Honaji v. Babaji Jagushet 2 B.H.C.R. 36 mentioned by Jenkins, C.J., in Shivrao Narayan v. Pundlik Bhaire 26 L. 437 : 4 Bom. L.R. 90, on the authority of the judgment of the Judicial Committee in Varden Seth San v. Luckpathy Royjee Lallah 9 M.I.A. 303 at p. 321 : Marsh. 461 : 1 Suth, P.C.J. 480 : 1 Sar. P.C.J. 857 : 19 E.R. 756 but it is doubtful, whether the Judicial Committe really intended to enunciate the comprehensive rule attributed to their decision. Lord Hobhouse, however, in the later case of Waghela Rajsanji v. Sheikh Maslndm 11 B. 551 at p. 561 : 14 I.A. 89 at p. 96 : 11

Ind. Jur. 315 : 5 Sar. P.C.J. 16 : 6 Ind. Dec. N.S. 364. state that "equity and good conscience" had been "generally interpreted to mean the rules of English Law if found applicable to Indian society and ciroumstances." See also Maha raja of Vizianagaram v. Sri Rajah Setrucherla 13 M.L.J. 83 : 26 M. 686. In this connection, reference may be made to the observation of Sir Barnes Peacock, C.J., in Rambux Chittangeo v. Madoosoodhun Paul B.L.R. Supp. Vol. 675 (F.B.) : 7 W.R. 377 : 2 Ind. Jur, (N.S.) 155 that, where rights of parties are determined according to the general principles of equity and justice, this must be done without any distinction, as in England, between that partial justice which is administered in the Courts of Law and the more full and complete justice for which it is frequently necessary to seek the assistance of a Court of equity. This was adopted by Jenkins, C.J., in Deb Narain Butt v. Ram Sadhan Mandal 20 Ind. Cas 63(SIC) : C. 1(SIC)7 at p. 146 : 18 C.L.J. 603, (SIC)7 C.W.N. 1143. In these circumstances, when the law of torts has not been codified and cases of civil liability for damages have been left to be decided according to rules of justice, equity and good conscience, it is not surprising to find that the law of civil wrongs as administered in British Indian Courts has been practically taken in its entirety from the Common Law of England; the only justice, equity and good conscience which Judges steeped in the principles of English jurisprudence could and did administer in default of any other rule was so much of English Law and usage as seemed reasonably applicable in this country. A familiar illustration of this is afforded by the judgment of the Judicial Committee in the case of Baboo Gunesh Dutt Singh v. Mugneeram 17 W.R. 283 : 11 B.L.R. (P.C.) 21 where the principle that witnesses cannot be used in a Civil Court for damages in respect of evidence given by them upon oath in a judicial proceeding was enunciated in the following terms in affirmance of the decision of this Court in Mugnee Ram Chowdhry v. Ganesh Dutt Singh 5 W.R. 134: "Their Lordships hold this maxim which certainly has been recognised by all the Courts of this country, to be one based upon principles of public policy. The ground of it is this, that it concerns the public and the administration of justice that witnesses giving their evidence on oath in a Court of justice should not have before their eyes the fear of being harassed by suits for damages; but that the only penalty which they should incur if they give evidence falsely should be an indictment for perjury." This, in the absence of legislation on the subject of civil wrongs, is, if we may say so without impropriety, a perfectly legitimate process; but if we were to read into the provisions of the Indian Penal Code an exception which finds no place therein, as the Court was invited to do in Nagarji Trikamji, In re 19 B. 340: 10 Ind. Dec. (N. s.) 230, where Counsel relied upon the lucid statement of Brett, M.B., in Munster v. Lamb (1883) 11 Q.B.D. 588 at p. 603 : 52 L.J.Q.B. 726 : 49 L.T. 252 : 32 W.R. 248 : 47 J.P. 805, as to the immunity enjoyed by Judges, Counsels and witnesses under the Common Law, the operation would in essence be legislation in the guise of judicial interpretation. This, as we shall next see, is precisely what happened in some of the cases in the books. We may add that no Question has been, or, indeed, could be raised as to the prerogative and power of the Legislature to discard the

principles of the Common Law, wholly or partially, and, in its enactments, to embody other rules which it prefers [see the observations of Lord Atkinson is Rodriguez v. Speyer Brothers (1919) A.C. 59 at p. 90 : 88 L.J.K.B. 147 : 119 L.T. 4.09 : 62 S.J. 765 : 34 T.L.R. 628, where the reason for the rule of immunity of Judges, Advocates and witnesses is lucidly stated].

13. One of the earliest cases in this Court is that of Queen v. Pursoram 2 W.R. (Cr.) 36 : 3 W.R. (Cr.) 45, where the petitioner was prosecuted for an offence under Section 500, Indian Penal Code, in respect of statements made by him to a Sub-Inspector of Police during preliminary enquiries in a case of riot: it was ruled that the decision of the question depended upon the provisions of the Indian Penal Code and the conviction was sustained. It was observed that the case did not fall under the ninth exception to Section 499, as the imputation was cot made in good faith nor was it necessary for the protection of the interests of the party making it. This view was affirmed on review Queen v. Pursoram 2 W.R. (Cr.) 36 : 3 W.R. (Cr.) 45 where, in answer to the contention of Mr. Doyne that under the English Law a defendant in a criminal case was not tongue-tied and might make use of any remarks, however defamatory per se, with perfect imunity and protection from indictment or action, Kemp, J., observed that the case before them was governed by the provisions of the Indian Penal Code; Glover, J, added that English Law gave greater license to a person in the position of the accused than exception nine to Section 499, Indian Penal Code, which required good faith as defined in Section 52, The question was raised again in Greene v. Delanney 14 W.R. (Cr. 27, where an attempt was made to test the propriety of the conviction by reference to the rules of the English Law of defamation. The defamatory matter was contained in a petition presented to a Civil Court. Phear, J. observed as follows:

The Judge erred in looking outside the Penal Code itself for the purpose of ascertaining the Criminal Law of this country with regard to defamation. If the facts which are the subject of a complaint fall within the limits of the definition in Section 499, construed as the section ought to be, according to the plain meaning of the words therein used, and if they are not covered by any of the exceptions to be found in the Code, then, in my judgment, they amount to defamation quite irrespective of what may be the English Law on the same subject.

It is, I think, most important in the interests of the public that the procedure of our Courts of Justice should not with impunity be used as the means of indulging feelings of personal spite. It is quite time for litigants in many of our Mofussil Courts to learn that if they make written statements and petitions the vehicle of groundless accusations against their opponents or other persons, whatever may be their purpose, they do so at their own peril.

14. Jackson, J. added, If he made the imputation in the petition presented by him to the Civil

Court without good faith, he is liable to punishment for defamation. His act will not come within the ninth exception to the 499th Section of the Penal Code in which defamation is defined. I also think, with Mr. Justice Phear, that in this country where litigants are so habitually regardless of the allegations they prefer against their opponents, it is right and proper that they should understand that false defamatory allegations made without good faith are punishable under the Criminal Laws of the country.

15. The point arose for consideration again in Shibo (SIC) Pandah, In the matter of the Petition of 4. C. 124 : 3 C.L.R. 122 : 1 (SIC) L.R. Cr. 72 : 2 Ind. Dec. (N.S.) 80. Markby and Prinsep, JJ., held that where the defamation charged was contained in a petition to a Magistrate, the question of good faith was material, as the case was governed by Section 499, Indian Penal Code. It may be observed in passing that a question was also raised as to burden of proof and as to a possible difference on that point between a trial in the original criminal jurisdiction of the High Court and a trial beyond the limits of the Presidency Town. The question turned upon the scope of the first Criminal Procedure Code, 1862, and the effect thereon of the Indian Evidence Act, 1872, and is not material for the solution of the point we are called upon to consider. The point arose again, but only incidentally, in Augada Ram Shaha v. Nemai Chand Shaha 23 C. 867 : 12 Ind. Dec. N.S.) 576 which was a civil suit for damages for defamation. Petheram, C.J., after referring to the decisions already mentioned under Section 499, Indian Penal Code, which he considered as binding, added: "We do not think it possible that a statement may be the subject of a criminal prosecution for defamation, and at the same time may be absolutely privileged, as far as the Civil Courts are concerned. But if there had been no authority on the point in this Court, we should have come to the same conclusion." There can be no doubt that, according to Petheram, C.J., and Rampini, J., the test of criminal liability is to be found in the pro-visions of the Indian Penal Code as had been held in previous cases; but their opinion as to the test of civil liability for damages for defamation was contrary to the view which had been adopted in Bhikuinber Singh v. Becharam Sircar 15 C. 264 : 7 Ind. Dec.(N. s.) 761; this, it is clear from the report, was not brought to the notice of the Court. The next case where the question appears to have come under consideration is that of Woolfun Bibi v. Jesarat Sheikh 27 C. 262 : 14 Ind. Dec. (N.S.) 173. This was a reference in a case of conviction under Section 500, Indian Penal Code, for defamatory statements made by two persons as witnesses in a civil suit. The Sessions Judge referred to the cases of Manjaya v. Sesha Shetti 11 M. 477 : 1 Weir 586 : 4 Ind. Dec. (N.S.) 332.; Queen-Empress v. Babaji 17 B. 127 : 9 Ind. Dec. (N.S.) 83 and Queen-Empress v. Balkrishna Vithal 17 B. 573 : 9 Ind. Dec. (N.S.) 374 as authorities for the proposition that witnesses could not be prosecuted for defamation on account of statements made in the witness-box. Reference was also made to Bhikumber Singh v. Becharam Sircar 15 C. 264 : 7 Ind. Dec.(N. s.) 761 and Baboo Gunesh Dutt Singh v. Mugneeram 17 W.R. 283 : 11 B.L.R. (P.C.) 21 both of which, as we have

seen, arose out of civil suits. The earlier decisions in this Court, which were directly in point, had evidently cot been traced. The Sessions Judge on the merits thought that the reasons given by the Magistrate for holding that the statements were not made in good faith did not appear to be sound. When the matter came up to this Court, there was no appearance on behalf of either the accused or the Crown, and the Court, on the authorities sited by the Sessions Judge, held that the accused who had as witnesses made statements relevant to the issue in the case under inquiry could not be prosecuted for defamation. We do not overlook the observation of Sir Barnes Peacock, C.J. in Rambux Chittangeo v. Modoosoodhun Paul B.L.R. Supp. Vol. 675 (F.B.) : 7 W.R. 377 : 2 Ind. Jur, (N.S.) 155 that it should not be assumed that arguments of Counsel are necessary to enable the Court to arrive at a Bound conclusion, as, whether the case is argued by Counsel or not, the Court should accurately ascertain the facts, apply their own knowledge of the law to the facts ascertained, and, if the law is doubtful, should search, if necessary, into the authorities before they pronounce a decision. This may be accepted as the general rule; but the fact remains that, in this instance, the earlier decisions in Queen v. Pursoram 2 W.R. (Cr.) 36 : 3 W.R. (Cr.) 45 and Greene v. Delanney 14 W.R. (Cr. 27 which were directly in point and had been mentioned with approval in Augada Ram Shaha v. Nemai Chand Shaha 23 C. 867 : 12 Ind. Dec. N.S.) 576, were not brought to the notice of the Court. Nor was any reference made to the decision in Kali Nath v. Gobinda Chandru 5 C.W.N. 293 where Stevens and Handley, JJ., had ruled that statements made by parties to a suit in the pleadings were not absolutely privileged and had referred with approval to the view ex pressed by Petheram, C.J., in Augada Ram Shaha v. Nemai Chand Saha 23 C. 867 : 12 Ind. Dec. N.S.) 576 dissenting from the contrary opinion in Nathji Muleshvar v. Lalbhai Ravidat 14 B. 97 : 7 Ind. Dec. (N.S.) 522. The case of Woolfun Bibi v. Jesarat Sheikh 27 C. 262 : 14 Ind. Dec. (N.S.) 173 was considered and distinguished in Haidar Ah v. Abru Mia 32 C. 756 : 2 C.L.J. 105 : 9 C.W.N. 911 : 2 Cr. S.J. 459. It was observed that even if the rule laid down therein was accepted as correct, it could not lie extended to voluntary and irrelevant statements made by a witness while under examination. Substantially to the same effect, is the decision in Giribala Dassi v. Pran Krishto Ghosh 8 C.W.N. 292. Amongst more recent cases in this Court, reference may be made to Kari Singh v. Emperor 18 Ind Cas. 660 : 40 C. 433 : 17 C.W.N. 297 : 14 Cr. L.J. 100, where it was ruled that Section 499 is exhaustive, that the Common Law doctrine of absolute privilege does not obtain in the Mofussil in India and that a defamatory statement which does not fall within the exceptions to Section 499 is riot privileged. In this case, reference was made to the decision in Kari Singh v. Emperor 18 Ind. Cas. 349 : 40 C. 441n : 17 C.W.N. 449 : 14 Cr. L.J. 61. where no final opinion was expressed upon the question of principle involved, but the conviction was set aside on the ground that its propriety was open to serious doubt. Reference was also made to the dictum of Jenkins, C.J., in Golap Jan v. Bhola Nath 11 Ind. Cas. 311 : 38 : C. 880 : 15 C.W.N. 917 where a complaint to a Magistrate, though defamatory, was said to be protected by the absolute privilege accorded in the

public interest to those who make statements to the Courts in the course of, and in relation to judicial proceedings. The question before Jenkins, C.J., however, arose in a civil suit for damages, and the Court was not invited to consider the true effect of Section 499, Indian Penal Code, in relation to a criminal prosecution for defamation. The question was raised again in Profalla Kumar Ghose v. Harendra Nath Chatterjee 38 Ind. Cas. 761 : 44 C. 970 : 21 C.W.N. 253 : 25 C.L.J. 445 : 18 Cr. L.J. 377 but no opinion was expressed as the order of the Court below was set aside on another ground. The question of absolute privilege was elaborately discussed also in Crowdy v. Reilly 18 Ind. Cas. 737 : 17 C.W.N. 554 : 17 C.L.J. 105 where it was pointed out that in civil suits for damages for defamation, the Court is free to adopt the Common Law rule on the subject, although in criminal cases the Court is bound to apply the rule of qualified privilege enunciated in Section 499. Beachcroft, J., was, however, inclined to the opinion that even in civil cases, the same restricted rule should be applied as in criminal eases, as laid down in Augada Earn Shaha v. Nemai Chand Shaha 23 C. 867 : 12 Ind. Dec. N.S.) 576 and Sandyal v. Bhaba Sundari Debi 7 Ind. Cas. 803 : 15 C.W.N. 995 : 14 C.L.J. 31. A review of these decisions shows that the trend of judicial opinion in this Court is decidedly in favour of the view that in cases of criminal prosecution for defamation, the Court is bound to apply the rule of qualified privilege enunciated in exceptions 7 and 9 to Section 499, Indian Penal Code. Woolfun Bibi v. Jesarat Sheikh 27 C. 262 : 14 Ind. Dec. (N.S.) 173 is, perhaps, the solitary exception to, this rule, though there are expressions of opinion in civil cases which also point in the same direction but in those cases, the question did not directly arise and the true effect of the provisions of the Indian Penal Code was not taken into consideration. The case of Upendra Nath Bagchi v. F.A. (SIC) 1 Ind. Cas. 1 47 : 36 C. 375 : 13 C.W.N. 340 : 9 C.L. 3. 259 : 9 Cr. L.J. 165, which was followed in Nikunja Behari Sen v. Harendra Chandra Sinha 20 Ind. Cas. 1008 : 41 C. 514 : 18 C.W.N. 424 : 14 Cr. L.J. 528 clearly recognises that the question of liability to conviction for the offence of defamation depends upon the terms of Section 499, Indian Penal Code, and approves the view taken by Jardine and (SIC) J.J., in Nagarji Trikamji, In re 19 B. 340: 10 Ind. Dec. (N. s.) 230 and by Chandavarkar and Knight, JJ., in Emperor v. Purshottamdas 9 Bom. L.R. 1287 : 6 Cr. L.J. 387 that the liability of a Pleader charged with defamation in respect of words spoken or written in the performance of professional duty depends upon Section 499, though it is held that the Court should presume good faith unless there is cogent proof to the contrary. This case clearly affirms the view that the privilege is not absolute but qualified; no doubt the burden is cast upon the prosecution to prove absence of good faith.

16. It is not necessary to analyse in minute detail the decisions in the other Courts. In Bombay, there are two decisions which favour the rule of absolute privilege: Queen-Empress v. Babaji 17 B. 127 : 9 Ind. Dec. (N.S.) 83; Queen-Empress v. Balkrishna Vithal 17 B. 573 : 9 Ind. Dec (N.S.) 374. The decision in Nagarji Trikamji, In re 19 B. 340: 10 Ind. Dec. (N. s.) 230 does not

fall within this category, as it recognises the applicability of Section 499, Indian Penal Code, and the impropriety of importing into a carefully considered (Statute like the Indian Penal Code, the rules of the Common Law of England based on public policy. The decision in Bhaishankar v. Wadia 2 Bom. L.R. 3 also is distinguishable, as the question of the privilege of Counsel came up for consideration by the Court in the exercise of its disciplinary powers, while the case of Baghavendra v. Kashinathbhat 19 B. 717 : 10 Ind. Dec. (N.S.) 480 only incidentally touches upon the question. In the Madras High Court the rule of absolute privilege appears to be, generally favoured. The leading decision is that of Sullivan v. Norton 10 M. 28 (F.B.) : 3 Ind. Dec. (N.S.) 770, where the question of the privilege of an Advocate in India same up for consideration before the Court in its disciplinary jurisdiction. The question of the liability of an Advocate to prosecution for the offence of defamation under the provisions of the Indian Penal Code did not directly arise for discussions; but the opinion was thrown out that it would be beyond measure embarrassing to the Advocate and disastrous to the interests of the orient if the Advocate was exposed to the liability of a criminal or civil charge for defamation for words uttered in Court. The question same up again in Manjaya v. Sesha Shetti 11 M. 477 : 1 Weir 586 : 4 Ind. Dec. (N.S.) 332. where it was ruled that the statements of witnesses, when under gross-examination before a Court of criminal jurisdiction, are absolutely privileged, and that if they are false, the remedy is by indictment for perjury and not for defamation. Reference was made by Collins, C.J., to the rule of the Common Law on the subject and by Shephard, J., to the decision of the Judicial Committee in Baboo Gunesh Dutt Singh v. Mugneeram 17 W.R. 283 : 11 B.L.R. (P.C.) 21 there is no discussion in either judgment of the effect of the provisions of the Indian Penal Code. In Hayes v. Christian 15 M. 414 : 2 M.L.J. 142 : 1 Weir 588 : 5 Ind. Dec. (N.S.) 641, the Court appears to have held, however, that the answer to the question depended upon Section 500, Indian Penal Code, but it reverted to Manjaya v. Sesha Shetti 11 M. 477 : 1 Weir 586 : 4 Ind. Dec. (N.S.) 332., in the later cases of Queen-Empress v. Govinda Pillai 16 M. 235 : 1 Weir 587: 5 Ind. Dec. (N.S.) 871; Alraja Naidu, In re 30 M. 222 : 6 Cr. L.J. 130 and Padmaraju Pantulu v. Vencataramana Aiyar 1 Ind. Cas. 799 : 19 M.L.J. 217 : 6 M.L.T. 15 : 9 Cr. L.J. 385, A dissentient note was sounded by Moore, J., in Nadu Goundan v. Nadu Goundan 1 Weir 589, where he held that an accused could not claim a special privilege beyond what was provided by the exceptions to Section 499. Subramaniya Iyer, J., relied upon Manjaya v. Shesha Shetti 11 M. 477 : 1 Weir 586 : 4 Ind. Dec. (N.S.) 332.. It became unnecessary, however, to make a reference to a Fall Bench as the statement in question was found to have been false and malicious. This course of decisions furnishes an admirable example of what is described by Lord Denman as "Law taken for granted" in a celebrated passage of his judgment in O'Connell v. Beg. (1844) 5 St. Tr. (N.S.) 1 (877) : 11 Cl. & Fin. 155 at p. 372 : 9 Jur. 25 : 1 Cox. C.C. 413 : 7 Ir. L.R. 261 : 8 E.R. 1061 at p. 1163 : 65 R.R. 59, which will be found quoted in Amrita Bazar Patrika, In the matter of (Moti Lal Ghose, In re) 45 Ind. Cas. 338 : 45 C. 169 : 26 C.L.J. 459 : 21 C.W.N. 1161 :

19 Cr. L.R. 530. In Ramun Nayar v. Subramanya Aiyar 17 M. 87 : 6 Ind. Dec. (N.S.) 60 it was ruled that a Judge was absolutely privileged in respect of words used by him whilst trying a case in Court. This conclusion was based on the rule of the Common Law, and no reference was made to Section 77, Indian Penal Code, which provides that nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is or which in good faith he believes to be given to him by law. In this state of the authorities, the question was ultimately referred to a Full Bench of three Judges in Potaraju Venkata Reddy v. Emperor 14 Ind. Cas. 659 : 36 M. 216 : (1912) M.W.N. 176 : 13 Cr. L.J. 275 : 11 M.L.T. 416 : 23 M.L.J. 39. It was ruled that, though the English doctrine of absolute privilege was not expressly recognised in Section 499 Indian Penal Code, it did not necessarily follow that it was the intention of the Legislature to exclude its application from the law of this country. We see no escape from the conclusion that, for reasons already assigned, the mode of interpretation adopted by the Madras High Court is opposed to the well-established canons of construction laid down by the House of Lords in Bank of England v. Vagliano (1891) A.C. 107 : 60 L.J.Q.B. 145 : 64 L.T. 353 : 39 W.R. 657 : 55 J.P. 676 and by the Judicial Committee in Narendra Nath v. Kamalbasini Dan 23 C. 563 : 23 I.A. 18 : 6 Sar. P.C.J. 667 : 6 M.L.J. 71 : 12 Ind. Dec. (N.S.) 374. The Indian Law Commissioners who prepared the draft of the Indian Penal Code took as their motto a statement which was drawn up by Macaulay and has now become classical; "Our principle is simply this--uniformity when you can have it; diversity when you must have it; but in all cases certainty." We find it impossible to hold that, although they framed an elaborate section with carefully worded explanations and exceptions, they still intended that the Courts should engraft thereon the rules of the Common Law of England based on public policy which might conceivably vary from time to time. It is manifest that if the method of interpretation which found favour with the Madras High Court in the case of Potaraju Venkata Reddy v. Emperor 14 Ind. Cas. 659 : 36 M. 216 : (1912) M.W.N. 176 : 13 Cr. L.J. 275 : 11 M.L.T. 416 : 23 M.L.J. 39 were adopted, a similar attempt might be made to invoke the aid of the principles of English Law or the rules of public policy, so as to qualify many other provisions of the Indian Penal Code. The inevitable result would follow that certainty would be replaced by uncertainty and order by chaos in a branch of the law which most vitally affects the people. See the observations of Baron Parke as to the dangers of the application of rules of public policy, in Egerton v. Brownlow (1853) 4 H.L.C. 1 at p. 123 : 23 L.J. Ch. 348 : 18 Jur. 71 : 8 St. Tr. (N.S.) 194 : 10 E.R. 359 : 94 R.R. 1 quoted by Lord Halsbury in Janson v. Driefontein Consolidated Mines (1902) A.C. 484 : 71 L.J.K.B. 857 : 87 L.T. 372 : 51 W.R. 142 : 7 Com. Cas. 268 : 18 T.L.R. 795 and by Lord Beading in Continental Tyre Rubber Co. v. Daimler Co., (1915) 1 K.B. 893 : 84 L.J.K.B. 926 : 112 L.T. 324 : 20 Com. Cas. 208 : 59 S.J. 232 : 31 T.L.R. 159. We may add that the subsequent judgment of the Madras High Court in Muthuswami v. Emperor 14 Ind. Cas. 757 : 37 M. 110 : 11 M.L.T. 431 : 13 Cr. L.J. 293 does not throw further light upon the matter, while the decision of the Full Bench in Krishnamal v.

Krishnaiyangar 15 Ind. Cas. 652 : 23 M.L.J. 50 : (1912) M.W.N. 473 : 13 Cr, L.J. (SIC) merely shows that a registration officer is not a judicial officer, a statement before whom, if defamatory, would be absolutely privileged under the rule laid down in Potaraju Venkata Reddy v. Emperor 14 Ind. Cas. 659 : 36 M. 216 : (1912) M.W.N. 176 : 13 Cr. L.J. 275 : 11 M.L.T. 416 : 23 M.L.J. 39.

17. The question has not come up before the Allahabad High Court for consideration quite so frequently as in Madras; but the view has uniformly prevailed there that the liability to prosecution for defamation must always be determined with reference to Section 499, Indian Penal Code. In Abdal Hakim v. Tek Chandar 3 A. 815 : A.W.N. (1881) 81 : 6 Ind. Jur. 320 : 2 Ind. Dec. (N.S.) 521 it was ruled in a civil suit for recovery of damages for defamation, that the law to be applied is that laid down in the Indian Penal Code and not the English Law of Libel and Slander. On this ground it was held that defamatory statements were not privileged merely because they were used in a petition preferred in a judicial proceeding. A different note was sounded by Brodhurst, J., in Dawan Singh v. Mahip Singh 10 A. 426 : A.W.N. (1888) 167 : 6 Ind. Dec. (N. s.)286 where, in considering the civil liability of a witness for damages for defamation, the principles of English Law as enunciated in Seaman v. Netherclift (1876) 2 C.P.D. 53 : 46 L.J.C.P. 128 : 35 L.T. 784 : 25 W.R. 159 and Dawkins v. Rokeby (1875) 7 H.L. 744 : 45 L.J.Q.B. 8 : 33 L.T. 196 : 23 W.R. 931 were quoted by him with approval. On the other hand, in Isuri Prasad Singh v. Umrao Singh 22 A. 234 : (SIC) W.N. (1900) 46 : 9 Ind. Dec. (N.S.) 1187 a statement made in a petition presented to a Distrust Magistrate for the transfer of a criminal case, was held not to amount to defamation,--not because of any principles of English Law which did not apply to prosecutions for defamation under the Indian Penal Code, but because the statement fell within the ninth exception to Section 499, Indian Penal Code. In Emperor v. Ganga Prasad 29 A. 685 : 4 A.L.J. 605 : 6 Cr. L.J. 197 : A.W.N. (1907) 235 the question arose with reference to a statement made by a witness in a criminal case. Knox, C.J., and Aikman, J. held that the statement was not absolutely privileged and further that the burden lay upon the accused to show that the statement he had made fell within one or other of the exceptions to Section 499, Indian Penal Code, or that he was protected from prosecution by the proviso to Section 132 of the Indian Evidence Act. Richards, J., in dissenting from this view, and holding that a prosecution for defamation under Section 499, Indian Penal Code, would not lie against a witness in respect of any statement made by him while under examination, even if such statement should not be relevant to the matter under enquiry, observed as follows:

It would be simply disastrous to the administration of justice in this country if a prosecution could be instituted against every witness who gave evidence in a Court of Justice for defamation. In proper cases, with the sanction of the Court a prosecution can be instituted against a witness

for giving false evidence, It is hardly conceivable that the law which provides for the sanction of the Court being obtained as a condition precedent to the institution of a prosecution against a witness for giving false evidence would permit a prosecution for defamation without any such sanction.

18. In a later case, Til Kanchan Gir v. Emperor 8 Ind. Cas. 220 : 11 Cr. L.J. 594; Karamat Hossain, J., held, with reference to a statement made in a plaint in a civil suit, that the plaintiff had been rightly prosecuted and convicted under Section 499, Indian Penal Code, as the element of good faith was wanting. It appears, consequently, that in Allahabad the view has uniformly prevailed, notwithstanding the dissentient note sounded by Richarde, J., that liability to criminal prosecution for defamation must be determined by reference to the provisions of Section 499, Indian Penal Code, and that a party or a witness is not protected unless good faith is established. A similar view has been adopted also in the Punjab: Maya Das v. Queen-Empress 14 P.R. 1893 Cr,; Phundi Ram v. Emperor 10 Ind. Cas. 682 : 7 P.W.R. 1911 Cr : 12 Cr. L.J. 193 and Miran Shah v. Emperor 15 Ind. Cas. 494 : 241 P.L.R. 1912 : 5 P.R. 1913 Cr. 31 P.W.R. 1912 Cr. 13 Cr. L.J. 494.

19. In the case of Emperor v. Ganga Prasad 29 A. 685 : 4 A.L.J. 605 : 6 Cr. L.J. 197 : A.W.N. (1907) 235 Richards, J., as we have seen, felt much pressed by the circumstance that a statement on oath in a judicial proceeding cannot be made the subject matter of a prosecution for an offence under Section 211, Indian Penal Code, without the prior sanction of the Court under Section 195, Sub-section (1), Clause (6), Criminal Procedure Code. The same difficulty had been felt earlier by Fulton, J, in Queen-Empress v. Balkrishna Vithal 17 B. 573 : 9 Ind. Dec (N.S.) 374 where he observed as follows:

The intention of the Legislature to protect witnesses from the (SIC) of improper prosecutions is shown by Section 195 of the Criminal Procedure Code, which forbids their prosecution for perjury without the express sanction of the Court cognizant of the facts of the case in which the false evidence is said to have been given. Bat all this solicitude for their protection would be wholly unavailing, if it were open to any private individuals to prosecute for defamation any witness who trade a statement which he considered injurious to his reputation.

20. In the, same case, Telang, J., explained his reasons for the adoption of the contrary view in the following terms:

I am unable to adopt the view, that on any correct principles of construction we should limit the meaning of the words of the section of the Indian Penal Code, defining defamation, so as to exclude therefrom any evidence given by a witness before a Court of Justice. It is admitted that

the words are wide enough to include such evidence, and I do not think that judicial interpretation can properly limit their scope either in view of general considerations about the policy of protecting witnesses from being harassed or of the absence of any prosecutions being hitherto instituted in such cases.

21. It is manifest that the ground assigned by Telang, J, must carry considerable weight. The Court is bound to administer the law as enunciated by the Legislature and neither to enlarge nor to restrict the sphere of its application. As Baron Parke said in Egerton v. Brownlow (1853) 4 H.L.C. 1 at p. 123 : 23 L.J. Ch. 348 : 18 Jur. 71 : 8 St. Tr. (N.S.) 194 : 10 E.R. 359 : 94 R.R. 1, "it is the province of the Judge to expound the law only; the written from the Statutes; the unwritten or Common Law from the decisions of our predecessors and of our existing Courts, from text writers of acknowledged authority, and upon the principles to be clearly deduced from them by sound reason and just inference." Now, the maker of a single statement may be guilty of two distinct offences one under Section 211 (which is an offense against public justice) and the other, an offence under Section 499, wherein the personal element largely predominates. The Legislature has provided, in the Criminal Procedure Code, that the sanction of the Court, where the offense is committed, is essential in the former case for the institution of criminal proceedings. In the latter case, the Legislature has omitted to make a similar provision. This diversity, for aught we know, may have been deliberate, and plainly affords no reason why the Court should struggle to hold that the statement does not fall within the mischief of the rule embodied in Section 499. The two offences are fundamentally distinct in nature, as is patent from the fact that the former is made non-compoundable while the latter remains compoundable; in the former case, for the initiation of the proceedings, the Legislature requires the sanction of the Court under Section 195, Criminal Procedure Code; in the latter case, cognizance can be taken of the offence, only upon a complaint made by the person aggrieved, under Section 198, Criminal Procedure Code. Whether every statement made by an Advocate, by a party to a judicial proceeding, or by a witness therein should be excluded from the category of defamation, or, if included therein, should be made punishable in a proceeding instituted only with the sanction of the Court where the statement was made, are manifestly questions of policy which can be settled appropriately only by the Legislature. If, for reasons of public policy, the Legislature thinks fit to adopt the first alternative, as it is unquestionably competent to do, and to confer on Advocates, parties and witnesses, not merely a qualified privilege as at present, but an absolute privilege as in the case of Judges, a new exception framed in suitable terms should be inserted in Section 499, Indian Penal Code. If, on the other hand, the second alternative commends itself to the Legislature as more expedient, Section 500, Indian Penal Code may well be included in the list of sections contained in Sections 195(1)(b), Criminal Procedure Code. It is, after all, the province of the Statesman and not of a Judicial Tribunal, to discuss, and of the Legislature to determine,

what is the best for the public good and to provide for it by proper enactments. But, till the law has been amended, in one or other of the modes just indicated, or, possibly in some other manner, it is incumbent upon us, if we are to avoid the greatest uncertainty and confusion, to interpret the clear and unambiguous provisions of the Statute in their plain, natural sense, and not allow ourselves to be led into speculations as to their reasonableness or unreasonableness by reference to the ever captivating but often misleading ideals of public policy.

22. Our conclusions then may be summarized as follows:

(1) If a party to a judicial proceeding is prosecuted for defamation in respect of a statement made therein on oath or otherwise, his liability must be determined by reference to the provisions of Section 499, Indian Penal Code. Under the Letters Patent, the question must be solved by the application of the provisions of the Indian Penal Code and not otherwise; the Court cannot engraft thereupon exceptions derived from the Common Law of England or based on grounds of public policy. Consequently, a person in such a position is entitled only to the benefit of the qualified privilege mentioned in Section 499, Indian Penal Code.

(2) If a party to a judicial proceeding is sued in a Civil Court for damages for defamation in respect of a statement made therein on oath or otherwise, his liability, in the absence of statutory rules applicable to the subject, must be determined with reference to principles of justice, equity and good conscience. 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. A small minority favours the view that the principles of justice, equity and good conscience should be identical with the rules embodied in the Indian Penal Code.

23. Tested in the light of the first rule just formulated, it is plain that the question of good faith is material, and as the disputed statements are not absolutely privileged, the proceedings cannot be quashed at this stage. The application of the petitioner thus fails, and it fails in its entirety, notwithstanding the dismissal of the application under Section 185, Criminal Procedure Code, In the first place, that application was subsequent to the institution of the complaint before the Presidency Magistrate. In the second place, the decision in Ram Sewak Lal v. Maneshwar Singh 6 Ind. Cas. 352 : 87 C. 604 : 11 Cr. L.J. 325 : 12 C.L.J. 15 : 14 C.W.N. 839 indicates that, whether prior or subsequent, the dismissal of the application for sanction does not attract the operation of Section 403, Criminal Procedure Code, so as to bar the prosecution for defamation.

24. The result is that the Rule is discharged.

Ernest Fletcher, J.

25. I agree.

Richardson, J.

26. I agree.

Walmsley, J.

27. I agree.

Buckland, J.

28. I agree.