

(1931) 11 MAD CK 0011
In the Madras High Court

A.D. Narayana Sah and Others

APPELLANT

Vs

Kannamma Bai (dead) and Others

RESPONDENT

Date of Decision : 20-11-1931

Acts Referred:

Penal Code, 1860 (IPC) — Section 497

Citation : (1932) ILR (Mad) 727 : 140 Ind. Cas. 422 : (1932) 35 LW 647 :
(1932) 62 MLJ 608

Hon'ble Judges : Cornish, J

Bench : Division Bench

Judgement

1. This is an appeal from a judgment of Eddy, J. The plaintiff in the Court below, who has since died, was a Hindu widow claiming to be a member

of the Bhujakshatriya community. The first two defendants are brothers; and all the defendants with the exception of the 2nd defendant are

responsible officers of that community. The plaintiff's claim was for damages for slander and for a declaration, injunction and damages for

excommunication. Her case was that the defendants orally stated that she had given birth to an illegitimate child in the Gosha Hospital, Madras.

The learned Trial Judge found that all the defendants uttered the slander complained of and gave the plaintiff Rs. 2,000 in respect of her claim for

damages. Then the next claim of the plaintiff was that she was excommunicated by the defendants without being given an opportunity of defending

herself against a charge of unchastity made by two women to the defendants that she had given birth to an illegitimate child at the Gosha Hospital

and praying for a decision of the Caste Panchayat. This was in May, 1927, and the result of the allegation was that the defendants decided in May

to excommunicate the plaintiff on account of the charge of unchastity made

against her. She was accordingly excommunicated and it is said that the order of excommunication was promulgated in October, 1927, when the defendants uttered the slander complained of by the plaintiff and in respect of which she sought damages in the Trial Court. In respect of the wrongful excommunication she claimed a declaration that the order of excommunication was invalid and that she was entitled to be re-admitted into the Bhujakshatriya -community and an injunction restraining the defendants from enforcing the order of excommunication and from publishing the alleged defamatory statements and damages. In the plaint it is alleged that the slander was published on and between the 7th May, 1927 and the 15th October, 1927. It is obvious that with regard to the former date, the suit for damages is barred by limitation but the learned Trial Judge has found as a fact that the slander was again published on the 15th October, 1927, and as the suit was filed in September, 1928, the plaintiff's claim with regard to that slander was not barred. On the claim for damages for wrongful excommunication, the plaintiff has been awarded by the learned Trial Judge Rs. 500 damages. He has also granted her the declaration and injunction prayed for.

2. This case raises two very interesting points: (1) Whether a claim for damages by a Hindu woman in respect of an allegation of unchastity is sustainable on the Original Side of this High Court without proof of special damage, and (2) whether a suit claiming damages for wrongful excommunication is maintainable.

3. Upon the first point we have had the benefit of the very able arguments of Mr. Duraiswami Aiyar on behalf of the appellants and Mr. K.

Krishnaswami Aiyangar on behalf of the respondents. Mr. Duraiswami Aiyar's contention is that the law with regard to slander which has to be

administered on the Original Side of this High Court is the Common Law of England and that the Slander of Women Act of 1891 is not made

applicable to India, that therefore, as no special damage was set out in the plaint and proved at the trial, the plaintiff's suit for damages for slander

ought to have been dismissed. This contention opens up at once a large and interesting discussion as to what is the law to be administered by the

High Courts here; and in order to guide us, we have been taken back to the earliest Charters of the Courts in this Presidency Town. We have had

a very careful examination of the first Mayor's Court: Charter of 1687, the Mayor's Court Charters of 1726 and 1753, the Recorder's Court

Charter of 1798, the Supreme Court: Charter of 1800, the Letters Patent of this High Court of 1862 and the amended Letters Patent of 1865. We

have also been referred to Regulation II of 1802 applicable to the Madras, mofussil Courts. In the Mayor's Court Charter of 1687 "all. causes

whatsoever, civil and criminal, between party and party whoever they be shall be adjudged according to "equity and" good conscience"." In the

Mayor's Court Charter of 1726 the judgment is to be given according to "justice and right". In the Mayor's Court Charter of 1753 the Court is to

give judgment according to "justice and right". In the Recorder's Court Charter of 1798 the Court is "to have such jurisdiction and authority as Our

Justices of Our Court of King's Bench have, and may lawfully exercise, within that part of Great Britain called England, as far as circumstances will

admit" and the Court is to give judgment according to "justice and right". The next Charter is the Supreme Court Charter of 1800. In it the Court is

invested with a jurisdiction similar to the jurisdiction of the King's Bench in England and it is also to give judgment according to "justice and right".

By clause 21 of the Charter it is provided that

the Court ... shall have like power and authority to hear, try and determine all, and all manner of civil suits and actions, which, by the authority of

any Act or Acts of Parliament might have been heard, tried or determined by the said Mayor's Court at Madras aforesaid, or which may now be

heard, tried on determined by the said Court of the Recorder of Madras.

4. In the Letters Patent of this High Court of 1862 the law to be administered by; this High Court in civil cases in the exercise of its Ordinary

Original Jurisdiction is to be such law and equity which would have been applied by the Supreme Court at Madras if these Letters Patent had not

been issued. In the amended Letters Patent of this High Court of 1865 the law to be administered by the High Court in its Ordinary Original Civil

Jurisdiction is the same as in the earlier Letters Patent. It seems clear, therefore, that the law to be applied in this High Court in the exercise of its

Ordinary Original Civil Jurisdiction is that obtaining in the old Mayor's Court. In *The Advocate-General of Bengal v. Ranee Surnotnoye Dossee*

(1863) 9 M.I.A. 387 the Calcutta Charter of 1726 was under discussion and it

was admitted in argument that it only applied to European servants of the company. On page 426 Lord Kingsdown in delivering the judgment of the Privy Council states as follows:

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, 13th Geo. I. Neither that nor the subsequent Charters expressly declare that the English law shall be so applied, but it seems

to have been held to be the necessary consequence of the provisions contained in them.

5. In that case what was being considered was whether the English Law of *felo de se* and forfeiture of goods and chattels does not extend to a

native Hindu, though a British subject, committing suicide at Calcutta. The Privy Council declined to apply the English Law and in the course of the

judgment it is pointed out that the application of other English Laws such as bigamy to the inhabitants of this country would be improper. Dealing

with the law which has to be administered, at page 22 of Morley's Digest, Vol. I, the law obtaining in the Supreme Courts at the three presidency

towns is stated to be under seven distinct heads:

1. The Common Law, as it prevailed in England in the year 1726, and which has not subsequently been altered by statutes especially extending to

India, or by the Acts of the Legislative Council of India.

2. The Statute Law" which prevailed in England in 1726, and which has not subsequently been altered by statutes especially extending to India, or

by the Acts of the Legislative Council of India.

3. The Statute Law expressly extending to India, which has been enacted since 1726, and has not been since repealed and the statutes which have

become extended to India by the Acts of the Legislative Council of India.

4. The Civil Law as it obtains in the Ecclesiastical and Admiralty Courts in England.

5. Regulations made by the Governor-General in Council and the Governors in Council previously to the 3rd and 4th will. IV, c. 85, and registered

in the Supreme Courts, and the Acts of the Legislative Council of India made under the 3rd and 4th Will. IV, c. 85.

6. The Hindu Law in actions regarding inheritance and succession to lands, rents and goods, and all matters of contract and dealing between party

and party in which a Hindu is a defendant.

7. The Muhammadan Law in actions regarding inheritance and succession to lands, rents and goods, and all matters of contract and dealing

between party and party in which a Muhammadan is a defendant.

6. We have to consider in this case whether classification No. 1 is correct or not. The Advocate-General of Bengal v. Ranee Surnomoye Dossee

(1863) 9 M.I.A. 387 to which reference has already been made, it will be seen, does not entirely support the learned author of Morley's Digest.

In The Supplement to the Government of India Act, by Sir Courtney I lbert, 3rd Ed., p. 360, it is stated as follows:

In matters for which neither the authority of Hindu or Muhammadan text-books or advisers nor the regulations and other enactments of the

Government supplied sufficient guidance, the Judges of the Civil Courts were usually directed to act in accordance with "justice, equity and good

conscience". An Englishman would naturally interpret these words as meaning such rules and principles of English Law as he happened to know

and considered applicable to the case; and thus under the influence of English Judges, native law and usage, were without express legislation,

largely supplemented, modified and superseded by English Law.

7. Then again on page 366 it is stated:

The Law of Torts or civil wrongs, as administered by the Courts of British India, whether to Europeans or to natives, is practically English Law.

The draft of a Bill to codify it was prepared some years ago, but the measure has never been introduced.

8. This latter statement is more in accordance with the view expressed in The Advocate-General of Bengal v. Ranee Surnomoye Dossete (1863) 9

M.I.A. 387 than that in Morley's Digest because it would seem to mean that the English Common Law is applied in this country wherever

practicable. There have been a number of decisions in this country upon this question. The first of these to which it is necessary to refer is Bhooni

Money Dossee v. Natobar Biswas. ILR (1901) 28 C. 452. This was a decision of a single Judge; and if this correctly states the law, then the

judgment in the Trial Court was wrong. That was, like this, a suit for damages against the defendant for having falsely and maliciously used

slandorous words imputing unchastity to the plaintiff, a Hindu married woman.

No special damage was alleged in the plaint, nor actual damage proved at the trial; and it was 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. Harrington, J., followed the English Common Law holding that the action was not sustainable without proof of special damage. In his view, by the Charter of 1726, the Common Law of England was introduced into Calcutta. The learned Judge dissented from the decision of the Madras High Court in *Parvathi v. Mannar* ILR (1884) 8 M. 175 and he distinguished those cases decided in the mofussil Courts in which the contrary view to that expressed by him had been taken as distinguishable on the ground that the English Law is not to be applied to the mofussil, an argument adopted here by Mr. S. Duraiswami Aiyar in his contention that *Parvathi v. Mannar* ILR (1884) 8 M. 175 has no application to a suit in the High Court. Although the state of the English Law with regard to slander previous to the Slander of Women Act of 1891 was considered unsatisfactory, in Harrington, J.'s opinion the reasons rendering that law unsatisfactory do not apply here because the slandered person can have his or her remedy in the Criminal Courts where: the slanderer can be punished whether the slanders are reduced to writing or not, that is to say, a slandered lady is able to clear her character as effectually and probably more effectually than it would be cleared if she were entitled to claim pecuniary compensation or damages. The Criminal Law of England is different as there slander is not a criminal offence.

Harrington, J., states at page 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 a 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 wrongdoer. *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.

9. This judgment, therefore, admits that the Common Law of England need not

be rigidly followed where, if it is adhered to in this country, it will work an injustice or hardship. Upon this point of particular value it seems to me are the observations of Kemp, J., in *Hirabai Jehangir v. Dinshaw Edulji*. ILR (1926) 51 B. 167 There: it was held that in an action for slander, the law to be applied to Parsis, in the town and island of Bombay, is the English Common Law so far as the circumstances of the place and of the inhabitants admit; that, should for any reason such law be inapplicable, the Court must decide the case according to "justice and right", and that; accordingly where an imputation of unchastity is falsely made against a Parsi married woman, she can sue for slander without; proof of special damage. Kemp, J. at p. 191 says:

Adultery is not, except where it amounts to treason, a crime in England, and to impute adultery to a married woman was not to impute to her a crime which would dispense with the necessity of laying special damage. In India, Section 497 of the Indian Penal Code specifically makes adultery a crime but says, at the same time, that the wife is not punishable as an abettor. We, therefore, have this manifest absurdity that, if we apply the English Common. Law on the point, a Parsi residing in the town and island of Bombay against whom a false imputation of adultery is levied has a remedy by a suit for damages, whilst a married Parsi woman against whom the same false imputation is made has none. I think that a law by the application of which such an unjust distinction arises cannot be said in this respect to be applicable to the circumstances arising in India, and the case of a married woman to whom unchastity is falsely imputed must be dealt with according to the justice and right enjoined by the Charter.

10. At page 192 he says:

The relation also in which the wife stands in India to her husband induced the authors of the Code (I.P.C.) to include adultery in the list of offences for which a complaint might be made by the husband against the traduccr. At the same time, they exempted from punishment the wife whose lot they regarded at the time when the Code was drafted as already sufficiently hard. That this consideration for the wife should place her at a disadvantage in respect of the relief obtainable through a Civil Court for an aspersion on her chastity was a result which was never contemplated.

No doubt, virtue in a woman is as much prized in India as it is in England, but whilst in England the punishment of the paramour, apart from the

liability for damages in a matrimonial petition, was left to the aggrieved husband, here the law makes the adulterer guilty of an offence under the

Indian Penal Code. The absurdity and injustice of the distinction before referred to in the latter case is accentuated when we recognise the fact,

which I think we must, that a slander on her chastity is a greater injury to a woman.

11. To my mind, the absurdity pointed out by Kemp, J., would be quite sufficient to justify a departure in India from the English Common Law

with regard to this matter. There is also another absurdity if the contention of the appellants here is correct, namely, that *Parvathi v. Mannar* ILR

(1884) 8 M. 175 is not applicable to this High Court because the law on the point is different in the mofussil to that here. If that view is correct, the

position would be that a woman whose chastity is assailed by words spoken just over the municipal limits of the presidency town need not allege

special damage in order to maintain a suit against her slanderer but that where exactly the same words are uttered inside those limits and no special

damage is alleged, the slandered woman has no cause of action. One distinction pointed out by Harrington, J., namely, the right to punish the

slanderer in Criminal Courts, is of no importance in this example because, in either case, whether in the mofussil or inside the presidency town, a

slandered woman has her criminal remedy. Having regard to the fact that this absurd distinction is admitted by the appellants--indeed it had to be

admitted in order to distinguish *Parvathi v. Mannar* ILR (1884) 8 M. 175 it would be another reason for not applying the English Common Law. It

is not suggested by the respondents that the English Common Law of slander should not be applied in other respects. It is merely contended that

the Courts are entitled to say how far it can be applied and that if it is found owing to the circumstances of the place and of its inhabitants to be

inapplicable, the Court must decide the case according to "justice and; right". It would appear that the view consistently adopted in Bombay has

been that the English Common Law is to be applied where circumstances permit provided it does not owe its origin to conditions peculiar to

England. In *The Advocate-General of Bengal v. Ranee Sumomoye Dossee* (1863) 9 M.I.A. 387 already referred to, Sir Barnes Peacock who

delivered the judgment of the Supreme Court, which is set out in the report of that case referring to the Charter 13, Geo. I, at page 398, is thus reported:

There can be no doubt that it was intended that the English Law should be administered as nearly as the circumstances of the place, and of the inhabitants, should admit. The words, give judgment according to justice and right, in suits and pleas between party and party, could have no other reasonable meaning than justice and right, according to the laws of England, so far as they regulated private rights between party and party. Such general words could not possibly refer to any law, such as the Mortmain Act, or, the Alien Laws, which had reference merely to some views of public policy, supposed to be applicable to England.

12. It has been argued that this view can only be understood to mean that in doing "justice and right" the Courts were to do it according to the laws of England without any qualification, but that contention, in my view, cannot be accepted in view of the earlier words of Sir Barnes Peacock, namely, "that the English Law should be administered as nearly as the circumstances of the place, and of the inhabitants, should admit." I now turn to *Parzfathi v. Mannar*. ILR (1884) 8 M. 175 That case raised the question whether an action for damages for slander with regard to her chastity could be maintained without proof of special damage by a married woman and it was held by Sir Charles Turner, C.J. and Muthuswami Aiyar, J., that the rule of English Law which prohibits, except in certain cases, an action for damages for oral defamation unless special damage is alleged, being found on no reasonable basis, should not be adopted by the Courts of British India. This was a suit in a mofussil Court and, as I understand it, has been regarded as good law since its decision in 1884. The argument that it has no application to the suit under appeal because it was a case in a mofussil Court appears to me to state the very reason for holding that the English Common Law is inapplicable having regard to the circumstances of the place, its laws, its people and the consequences of such a slander upon a married woman under the customs of this country. Anything more manifestly absurd than to make a distinction between slander in, the mofussil and one in the presidency town it is impossible to imagine. In *Sukkan Teli v. Bipad Teli* it was held that the rule laid down in *Bhooni*

Money Dossee v. Natobar Biswas ILR (1901) 28 C. 452 does

not govern a suit in the mofussil for slander alleging unchastity on the part of a married woman. It is difficult to follow why there should be any

distinction between a suit in the mofussil and one in a presidency town in respect of similar slander; and the words" used in Regulation II of 1802

applicable to the Madras Mofussil Courts, namely, ""Justice, Equity and Good Conscience"" are not, in my view, so different from the words

Justice and Right"" as to justify any such distinction. Another case of importance is Mool Chand v. Aliuar Chetty. ILR (1915) 39 MI. 548 There it

was held that a release by a decree-holder of some of the joint judgment-debtors from liability under the decree does not operate as a release of

the other judgment-debtors from their liability and that the rule of English Law should not be applied in India, as it is: based on the substantive rule

applicable to contractual joint debtors, which is different u/s 44 of the Indian. Contract: Act, and is not in consonance with justice, equity and good

conscience. Sadasiva Aiyar, J., on page 552 says:

If the passage (at page 46) in the judgment of Muthuswami Aiyar, J., in Gurusami v. Chinna Mannar and Gurusami v. Sadasiva ILR (1881) 5 M.

37 was intended to-lay down that the High Court on its original side is hound to decide questions, like the one in controversy on the basis of

English precedents and English Common Law procedure even though the following of such precedents and procedure may be against "justice and

right" or the "justice, equity and good conscience" which are the true guides to be followed according to the Charter Acts, I respectfully differ from

the observation in that passage. The doctrine that the release of one joint-debtor releases the others is an artificial doctrine not consonant with

"justice and right".

13. I agree with Sadasiva Aiyar J.'s observations and cannot see any real distinction between the words ""justice and right"" or ""justice, equity and

good conscience."" If there is no real distinction, then the law as regards slander suits claiming damages is the same in the mofussil as in the

presidency towns, as indeed it ought to be. Taking the view, therefore, that it would not be ""just and right"" or in consonance with ""justice, equity

and good conscience"" to apply the English Common Law as it was before the Slander of Women Act of 1891 on account of the circumstances of

the place and other matters to which I have already drawn attention, I must hold that the learned Trial Judge was right in holding that the

respondent was entitled to succeed in her claim for damages without proof of special damage and I see no reason for saying that the damages

awarded, namely, Rs. 2,000 were excessive. On the other question that the plaintiff's excommunication was wrongful, the learned Trial Judge has

found, as a fact that it was; and there is clear evidence to support that finding and indeed it is not challenged here; but it is contended that a suit for

damages for wrongful excommunication does not lie. It is argued that in addition to the reliefs of a declaration that the excommunication was

wrongful and injunction restraining that excommunication, a claim for damages is a claim for damages for defamation. This argument has for its

foundation the decision in *Nathu v. Keshawji* ILR (1901) 26 B. 174 where it was held that suits claiming relief for loss of caste and character are in

the nature of suits for libel and fall within the law applicable to such suits. It is contended, therefore, that what the Lower Court did was to award

the respondent damages twice over viz., Rs. 2,000 for slander and Rs. 500 for slander under the description damages for wrongful

excommunication. Whatever may have been decided in *Nathu v. Keshawji* ILR (1901) 26 B. 174 can have no possible application to the present

case. That was a suit in which the question was entirely a caste question and fell within Bombay Regulation II of 1827. In his notes to Section 9 of

the Civil Procedure Code, Sir D. Mulla distinguishes the Bombay case from other cases by pointing out that; cognizance of such a suit was

expressly barred by the Bombay Regulation already referred to and adds ""but a suit is maintainable for damages on account of an alleged injury to

the caste and character of the plaintiff arising from some illegal act or unjustifiable conduct of the other party.

14. it is quite true that excommunication from caste causes injury to the character of the person excommunicated but it is quite obvious that injury

of a very grave nature, apart from injury to character, must be suffered by the person so expellgd or excommunicated. Although at one time it was

contended by the appellants that it is not a serious matter to be expelled from a caste, it was subsequently conceded tha t very serious injury is

bound to be suffered. Not only is that person excommunicated, but all those members of the caste who continue afterwards to have social

intercourse with him suffer the same fate. Even the members of the same family as the person excommunicated are excommunicated if they have anything to do with the member of the family so expelled. Under these circumstances, in my view, it cannot be said that the respondent was not entitled to succeed in her suit. It is not suggested of course that if there had been a bona fide expulsion of the respondent from the caste, she could have succeeded. As before stated, there is a finding here that she was wrongly excommunicated without having been allowed an opportunity of defending herself. The damages awarded in the Lower Court were not excessive and this appeal must be dismissed with costs which will be allowed on the higher scale on account of the great importance of the questions of law argued here. Those costs we fix at Rs. 500.

Cornish, J.

15. I am of the same opinion. The learned Trial Judge having found, as I think rightly, that no special damage has been proved, the plaintiff's suit would not be sustainable unless we are to hold contrary to the English Common Law which would be applicable in this country, that, spoken words imputing unchastity to a Hindu woman are in the presidency town actionable without proof of special damage. According to the English Law spoken words are actionable per se in certain specified cases, (1) when they charge the plaintiff with, a crime punishable by imprisonment, (2) if they impute to him a contagious disease which tends to exclude him from society, (3) if they defame him touching his profession or trade, and (4) since the Slander of Women Act, 1891, if they impute unchastity to a woman. With these exceptions defamatory spoken words are not actionable by the law of England without proof of special damage. The question here is whether the High Court administering law and equity in the exercise of its original jurisdiction u/s 19 of the Letters Patent is bound to decide this case by the English Common Law which means the law as it stood before it was amended by the Slander of Women Act, that Act not having been made applicable to India. Section 19 of the Letters Patent defines the law and equity to be administered by the High Court in its original jurisdiction as the law and equity which would have been applied if the Letters Patent had not issued. It is, therefore, necessary to refer to the law which the predecessors of the High Court, viz., the Mayor's Court, the

Court of the Recorder and the Supreme Court, were directed by their Charters to administer. It is a remarkable fact, as was pointed out by their

Lordships of the Judicial Committee in *The Advocate-General of Bengal v. Ranee Surnonioye Dossee* (1863) 9 M.I.A. 387 that neither the

Charter of 13 George I, nor any of the subsequent Charters, expressly declared that English Law should be administered to the natives of India.

The Supreme Court Charter of 1800 invested the Court with a jurisdiction similar to the jurisdiction of the King's Bench in England, "as far as

circumstances will admit"; and the clause in the Charter providing for the proceedings in the Court directed that it should "give judgment according

to justice and right." This phrase is also to be found in the earlier Charters regulating proceedings in the Mayor's Court and in the Court of the

Recorder. Sir Barnes Peacock, CJ., delivering the judgment of the Supreme Court of Calcutta, which went on appeal to the Judicial Committee, in

The Advocate-General of Bengal v. Ranee Surnonioye Dossee (1863) 9 M.I.A. 387 and was approved by their Lordships, said with reference to

the law administered by the Courts under the Charter:

A Charter or Statute by which Courts of Justice are constituted, does not necessarily determine the law which they are to administer, but in

construing the Charter of George I, there can be no doubt that it was intended that the English Law should be administered as nearly as the

circumstances of the place, and of the inhabitants, should admit. The words, give judgment according to justice and right, in suits and pleas

between party and party, could have no other reasonable meaning than justice and right, according to the laws of England, so far as they regulated

private rights between party and party.

16. The construction, then, which has been put on the language of the Charters is that they do not intend that English Law should be applied in its

entirety to India but only to the extent that the circumstances of the people or the place admit. In *The Advocate-General of Bengal v. Ranee*

Surnomoye Dossee (1863) 9 M.I.A. 387 the law of forfeiture to the Crown of the goods of a *felo de se* was held to be inapplicable to Hindus. In

Mayor of Lyons v. East India Company (1836) 1 M.I.A. 175 it was held that the introduction of English Law into India did not attract the law

relating to aliens. In the *Tagore* case¹⁰ their Lordships ruled that a Hindu,

testator was not capable of creating an estate known in England as an estate-tail, founded as it was on a highly complicated system of English Law.

17. In the light of the above authorities it may be doubted if the Court should strictly administer to Hindus the English Common Law of Slander,

which has been described as an artificial law, resting on the most artificial distinctions (see the judgment of Lord Haldane in *Jones v. Jones* (1916)

2 A.C. 481.

18. There are only two reported cases in which the precise question before us has arisen, viz., *Bhooni Money Dossee v. Natobar Biswas* ILR

(1901) 28 C. 452 and *Hirabai Jehangir v. Dinshaw Edulji*. ILR (1926) 51 B. 167 In the first of these cases it was held by Harrington, J., that by

the Common Law of England introduced into Calcutta by the Charter 13 Geo. I an action of slander in respect of an imputation of unchastity was

not maintainable by a Hindu woman without proof of special damage. In *Hirabai Jehangir v. Din-shazv Edulji* ILR (1926) 51 B. 167 a Bench held

that such an action was maintainable by a Parsi woman in the Presidency Town without proof of special damage. The learned Judges were of

opinion that the anomaly presented by a state of law which permitted a husband charged with adultery to maintain an action, (the charge of adultery

implying the commission of a criminal offence punishable by the Penal Code), without proof of special damage, but which, if the contention for the

defendant slanderer prevailed, would not permit his wife charged with adultery (adultery not being a penal offence in the woman under the Code)

to maintain an action without proof of special damage, was a circumstance which made the English rule of law in actions for slander of woman

inapplicable. If it was simply a matter of choice between the decisions in *Bhooni Money Dossee v. Natobar Biswas* ILR (1901) 28 C. 452 and

Hirabai Jehangir v. Dinshaw Edulji ILR (1926) 51 B. 167. I should be disposed to prefer the view of Harrington, J., that there is nothing repugnant

to justice and equity in requiring a person who is claiming compensation for slander to prove that some damage has been caused to him or her

thereby; the more so, having regard to the effective remedy there is at hand to the slandered person against the slanderer in Sections 499 and 500

of the Indian Penal Code. But the cases in this country have gone so far in the direction of relaxing restrictions on the maintainability of suits for

defamation that I think it is not now possible to confine suits such as the present one to cases where special damage is proved Thus, in *Parvathi v.*

Mannar ILR (1884) 8 M. 175 it was held by Sir Charles Turner, C.J. and Muthuswami Aiyar, J., that the rule of law requiring a woman to prove

special damage in a suit for slander was not founded on natural justice and should not be imported into British India. In *Sukkan Teli v. Bipad Teli*

ILR (1906) 34 C. 48 it was held, following a course of decisions in the Calcutta High Court and on the authority of *Parvathi v. Mannar* ILR

(1884) 8 M. 175 that where words are defamatory in themselves, and not mere verbal abuse, they are actionable though no special damage is

proved. A similar rule has been laid down by the Allahabad High Court: see *Daman Singh v. Mahip Singh* ILR (1888) 10 A. 425 and *Harakh*

Chand v. Gamga Prasad Rai. ILR (1924) 47 A. 391 Mr. Duraiswami Aiyar, the learned Counsel for the appellants, has urged that these were

cases which came to the High Court on appeal from the mofussil, and that they were governed by a different rule, that of justice, equity and good

conscience, which Section 21 of the Letters Patent requires shall be administered by the High Court in the exercise of its appellate jurisdiction.

The; Court in *Sukkan Teli v. Bipad Teli* ILR (1906) 34 C. 48 appears to have distinguished the decision in *Bhooni Money Dossee v. Natobar*

Biswas ILR (1901) 28 C. 452 on that ground. But, in my judgment, no distinction is to be made between suits arising within or without the limits of

the High Court's Original Civil Jurisdiction. "Equity and good conscience," said their Lordships of the Judicial Committee in *Waghela Rajsanji v.*

Shekh Masludin ILR (1926) 51 B. 167 "are generally interpreted to mean the rules of English Law if found applicable to Indian society and

circumstances." The words "Justice and Right" in the Charters mean the same thing, according to the judgment of Sir Barnes Peacock to which

reference has already been made. There is, then, no reason why one rule should be applied under the Charters and another rule under the Letters

Patent. The conclusion I come to upon a consideration of the authorities is that *Eddy, J.*, was right in holding that the plaintiff's suit was

maintainable: without proof of special damage, and that the appeal fails.

19. With regard to the other subject-matter of appeal, I think that the wrongful expulsion of the plaintiff from caste gave her a cause of action quite

apart from the slander, although the slander was the reason for her being excommunicated. "" The case in Nathu v. Keshazvji ILR (1901) 26 B.

174 which has been cited on behalf of the appellant panchayatdars does not help them, for that case turned on the special provisions of the

Bombay Regulation restricting the power of the Courts to interfere in caste disputes. The cases in Ganapati Bhatta v. Bkarati Swami ILR (1894)

17 M. 222 : 4 M.L.J. 101 and Jagatnnath Churn v. Akali Dassia ILR (1893) 21 C. 463 show that panchayatdars may be liable for the exercise of

their powers when they act without due care and to the detriment of a member of a caste. The appellants condemned the plaintiff without giving her

an opportunity of being heard. They chose to act on mere hearsay which would at once have been proved to be untrue by enquiry at the Hospital

where the plaintiff was alleged to have given birth to an illegitimate child, and this enquiry could easily have been made as the Hospital is in the,

locality. In my opinion the appellants have made themselves liable for damages, and I agree that this part of their appeal also fails.