

portion of the prayer which asks for relief upon the ground of a right to maintenance, we find that it is not sought *quâ* maintenance in a Hindú sense, but as interest upon the plaintiff's share in the ancestral property. The amount of the share is made the measure of the maintenance claimed.

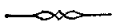
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For these reasons I have not overruled the demurrer upon this ground.

The only remaining ground for relief prayed is in respect of the partnership stated in the Bill. The character of that partnership is so defined in the Bill that any right to account fails upon the decision I have already made. The alleged partnership depends upon the plaintiff's right to a present possessory share in the family ancestral property, and, it having been decided that he has not such a right, the claim upon this ground also fails.

The main question was the plaintiff's right to a present compulsory partition of ancestral estate. He has failed as to the moveable property in point of law, and as to immoveable property upon the double ground, that the Court has no jurisdiction to entertain the question; and that, even if it had, a sufficient case for partition has not been made out upon the Bill. I therefore allow the demurrer with costs.

*Demurrer allowed with costs.*



*Original Suit No. 385 of 1864.*

E. I. HOWARD ..... *Plaintiff*.  
 M. MULL ..... *Defendant*.

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*Libel—Comments on acts of public men—Newspaper—Privilege.*

Every subject has a right to comment on those acts of public men which concern him as a subject of the realm, if he does not make his commentary a cloak for malice and slander.

A writer in a public paper has the same right, and it is his privilege to comment on the acts of public men which concern not himself only but which concern the public.

Where a writer makes the public conduct of a public man the subject of comment, and it is for the public good, the writer is not liable to an action if the comments are made honestly, and he honestly believes the facts to be as he states them.

THIS was a suit instituted by the plaintiff to recover from the defendant, who was managing proprietor of the "Times of India," damages for the publication by the defend-

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ant in the "*Times of India*" of certain libels concerning the plaintiff, and of and concerning him in his office of Director of Public Instruction.

The plaint set out in full the articles of which the plaintiff complained. It was presented for acceptance to Arnould, J., on the 13th May 1864, but was rejected by him on the ground that the series of articles did not constitute a libel, but amounted in substance to a demand for Government investigation into a charge of misconduct affecting the plaintiff in his official capacity as Director of Public Instruction.

From the order rejecting the plaint the plaintiff appealed. The Appeal Court directed the plaint to be received and filed.

To illustrate that part of the judgment in this case which bears upon the law of libel in India generally, it is only necessary to set out the first in the series of articles. Omitting the first two paragraphs, which were introductory, it ran thus:—

“For some time back we have received numerous communications, in various forms, seriously affecting Mr. Howard’s official character, and not less damaging, if unexplained, to the cause of education in this Presidency. Disentangled from what may be exaggeration or supposition, the facts seem to be much as follows:—There is connected with the Educational Department a Book Depôt or ‘Department,’ established by Government with the charitable object of providing, on easy terms, to the poor scholars of the Presidency the requisite school literature. For years of innocent operation it performed its useful functions by circulating McCulloch’s Course of Lessons, the Irish Series of School Books, &c., &c. These books were selected by the Secular Board of Education, and by a majority of natives. The Christian allusions in them were of course microscopically minute. For instance, in the four hundred and twenty-four pages of McCulloch’s Course of Reading, the fortieth edition of which lies before us, we find only one page which contains a religious paragraph; it is an excerpt from Dr. Chalmers, and is so little distinctive that it might have been written by Mr. Chander Sen or by Bhau Daji.

“It was enough, however, to give a handle for the disparagement of the books; and it was seen by Mr. Howard that the issue of a series of effectually weeded school books would be a job worth doing. It was therefore undertaken in the first instance departmentally, the aid of various gentlemen in the Department being liberally laid under contribution, and the aid of the books which were to be

displaced by it more liberally still. A dish of McCulloch and the Irish Book, with trimmings in the shape of some special pieces remarkable for their novel views of things Indian and English, was then prepared; whole pages of excerpts, which had been laboriously culled by McCulloch from almost all the best writers in the English language, were transported bodily by Mr. Howard, without acknowledgment, and in easy breezy indifference to McCulloch's property-right, into the 'Departmental Series.' A few specimens of the accuracy of Educationist information were introduced; and the school boys of India were informed, on the authority of the Director of Public Instruction, that England was an Island; Lord Elphinstone an Englishman; gunny, a kind of bag; the peepul the same tree as the banyan; that Rama killed Rackshas; and that the bamboo is the only palm in the country.

"In a short time, it is said, it began to manifest itself to Mr. Howard's mind, that properly managed, these pretty books might be made to turn him a very pretty penny. What if the poor students whose education had to be paid for by fees extorted with difficulty and supplemented by payments from the State, could be made to pay a round sum to the compiler for the school books which he could oblige them to purchase, so that while the taxpayer paid for the poor scholars' schooling, the poor scholar should be forced to pay Mr. Howard for the necessary books? The idea, though not very new, was at once seen to be a fortune. It was calculated at not less than one thousand pounds a year, with unlimited power, of increase, and though several gentlemen had given time to the preparation of the series, what so obviously natural as that the Director of Public Instruction should alone claim the copyright put his own name on the title-page, and then pocket the proceeds?

"Now it is credibly asserted that this monstrous perversion of the power and means placed at his disposal has been perpetrated by Mr. Howard, oblivious of the plain teaching of an enormous pay abstract, oblivious of the rule, not of Government only but of all employers of skilled labour, that the profits of the concern committed to the guidance of those they employ belong to the employers; oblivious of the inevitable exposure, and of the public disgrace of appearing to all India and all England as the licensed oppressor of the wretched scholars out of whose penury this handsome income has to be squeezed drop by drop, it is credibly reported that Mr. Edward Irvine Howard has quietly assumed that he has a right to the copyright of these school books; and is now, with what, if substantiated, will be called the culpable complicity of Government, drawing this vast sum of money, and three times this from the sale of the miserable productions which he has in his position of Director of Public Instruction forced upon the poor scholars of this Presidency;

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*White and Hayllar* for the plaintiff.

*Bayley and Marriott* for the defendant.

*Cur. adv. vult.*

30th January 1866—COUCH, J.: The defendant having admitted the printing and publishing of the newspapers containing the several articles stated in the plaint and alleged by the plaintiff to be libellous, the questions to be determined are whether, (with the exception of the passage set out in the 9th paragraph of the defendant's first written statement, and forming part of the alleged libel stated in the 6th paragraph of the plaint and published in the newspaper of the 6th of May,) the facts stated in the several articles are substantially true, or the statements and observations are of such a nature and made under such circumstances, as not to amount in law to a libel; and whether the plaintiff is entitled to recover any damages for the libel contained in the passage referred to beyond the sum of Rs. 2,000, which the defendant has by his written statement offered to pay in satisfaction and discharge of the plaintiff's cause of action so far as it relates to that passage, and the plaintiff has refused to accept, and claims further damages in respect of it. These questions embrace all the material questions raised by the several issues which have been recorded, and which might perhaps have been less numerous than they are.\*

The plaintiff in this case had been, and was at the time of the publication of the articles complained of, Director of Public Instruction in this Presidency, and the libels are

\* *Notc.*—The issues were settled in Feb. 1865 by Mr. Justice Gore.

alleged in the plaint to have been published of and concerning him in that office. By the 2nd exception to Sec. 499 of the Indian Penal Code it is declared that it is not defamation to express in good faith any opinion whatever respecting the conduct of a public man in the discharge of his public functions, or respecting his character so far as his character appears\* in that conduct and no further. And by the 9th exception, it is declared that it is not defamation to make an imputation upon 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. These are provisions of the criminal law; but the same rules ought to be applied to civil proceedings for defamation; and where a person would not be punishable under the criminal law, he ought not to be liable to pay damages to the person upon whose conduct or character he has expressed an opinion or made an imputation. But my view of the law is not founded merely upon the Penal Code, and I have referred to it rather by way of illustration than otherwise. Every subject has a right to comment on those acts of public men which concern him as a subject of the realm, if he does not make his commentary a cloak for malice and slander. A writer in a public paper has the same right as any other person, and it is his privilege, if indeed it is not his duty, to comment on the acts of public men which concern not himself only but which concern the public, and the discussion of which is for the public good. And where a person makes the public conduct of a public man the subject of comment and it is for the public good, he is not liable to an action if the comments are made honestly, and he honestly believes the facts to be as he states them, and there is no wilful misrepresentation of fact or any misstatement which he must have known to be a misstatement if he had exercised ordinary care. This is in my opinion the rule to be derived from the many cases which have been decided in English Courts, and I have now to apply it to the publications of which the plaintiff has complained as being libellous.

In a criminal prosecution for defamation, good faith, which by Sec. 52 of the Indian Penal Code is defined as including due care and attention, is, by Act XVIII. of 1862, sec. 27, directed to be presumed unless the contrary appear; and in

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England where the publication is of such a nature, or made under such circumstances, as *prima facie* to entitle it to be privileged, the *onus* of proving malice is on the plaintiff, and the evidence should raise a probability of malice, and be more consistent with its existence than with its non-existence. Malice or want of good faith may be shown either by extrinsic evidence or by the language used in the writings complained of; and in the present case no extrinsic evidence of malice or want of good faith having been given, the plaintiff must, upon this point, rely upon what appears in the articles in the newspapers.

The first article complained of was published in the *Times of India* on the 30th of April 1864. It commences "Mr. E. I. Howard is soon to leave India, and resign for a time at least the Office of Director of Public Instruction." In the first two paragraphs I find nothing which, in my opinion, the writer of the article was not justified in saying, and which does not come within the limits of the privilege which I have stated; and it is unnecessary for me to read them. Nor can I regard the fact, that Mr. Howard was, as it appears to the writer's knowledge, about to leave India when the article was published, as showing that it was not honestly written. Indeed I think if the writer had waited until Mr. Howard had left India and had thereby become unable, without considerable delay, to make any reply to, or explanation of, the matters alleged against him, there would have been more foundation for the charge of want of good faith than there is now.

(His Lordship read the article and proceeded): One of the principal questions in this case is whether this description of Mr. Howard's Series of Books and of the manner in which it was prepared, and the motives which led to its being undertaken is a fair and true one, or what the writer honestly believed to be fair and true. If it be, then the article does not amount in law to a libel; but if not, the publication cannot be justified, and the plaintiff has a ground of suit against the defendant.

It is not supposed that the defendant was the writer of the articles complained of, but having adopted and published them, he must be considered as standing in the place of the writer, and liable to the same extent as he would have been

if he had been known and the plaintiff had sued him. The history of these books begins with a letter addressed to Mr. Hart, the then Secretary to Government, signed by the late Mr. Jagannáth Shankarshet and a numerous body of native gentlemen, and put in evidence by the defendant, in which, after calling the attention of the Government to the rules in force in the Elphinstone Institution with regard to religion, they state that the class books authorized to be used in the school department of the Elphinstone Institution and in Government Schools throughout the Presidency were those edited and published in Great Britain by Dr. J. M. McCulloch and Messrs. W. and R. Chambers, and submit that those books were in one important particular very ill-suited to the thousands of native children who were made to learn from them in the Elphinstone Institution and other educational institutions established by Government, the books having been prepared expressly for the use of and therefore adapted for children professing the Christian religion. "Each book," they say, "has its quota of religious lessons which form one of the principal features, and are introduced into these school books for the express purpose of imparting religious education and communication or knowledge of the principal doctrines and tenets of Christianity as deduced from the Bible and propounded by Christian theologians." And after adverting to the contingency that in the absence of any distinct or formal prohibition issued on the subject, a teacher might feel himself justified in taking full advantage of the authorized class books and consider himself at liberty to impart to the native pupils such religious instruction as was embodied in them, they beg leave to represent to the Government the strong feeling of the generality of their countrymen who entertained serious apprehensions on this point, and considered it highly dangerous to place in the hands of their children such books of instruction as were calculated to interfere with and undermine their faith and lead to their conversion to Christianity, and pray that the Government in Council would adopt measures with the view of placing the subject on a right and satisfactory footing. This letter was, on the 9th of June 1857, referred to the plaintiff, who was then Director of Public Instruction, for report, and on the 16th he made his report which has also been put in evidence by the defendant. In that report, after stating that the books in

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question were not introduced into Government schools by him or his predecessor, or of late years, but were the recognised text books introduced and continued by the Board of Education, of which the gentlemen who headed the petition were members to the last, he says, "I think the books in many respects bad books, and have ordered large quantities of the series published by the Irish Commissioners with the view of supplying the defects, and partially superseding the Scotch series. But it is unavoidable unless we bring out a series of our own, but that any set of books prepared in Great Britain will contain some kind of religious teaching. I do not recommend that Government should undertake the task, which in this country would be most arduous, of preparing a set of books absolutely free from religion, and as the petitioners make no practical suggestion of any kind for the provision of an unobjectionable series, I think we have no alternative but to use the best European books we can find." It was apparently soon after this report that the plaintiff began to prepare his school books, as on the list given in the note to Para. 76 of his report as Director of Public Instruction for the year 1857-58, the 'English Primer' the first of them, appears; and Para. 29 of his report for 1859-60 contains a list of the English books published during the year, and stated to be by the Director of Public Instruction. In para. 30 of this report Mr. Howard says, "The very large consumption of these books requiring the publication of new editions at intervals of less than a year has been surprising as well as gratifying to me. It cannot be adequately accounted for by the wants of Government English schools, and must be attributed in a great measure to a newly-created demand on the part of the Native public. The books are so priced as to pay all expenses of publication and sale, and even to leave a small profit to Government, so that though they are certainly cheap they are not extraordinarily so. It seems fair to conclude that English education has of late received a considerable stimulus." And in the evidence which he gave at the hearing of the suit he said "Shortly after entering the office (Director of Public Instruction) my attention was directed to the series of books used in the English schools—to them chiefly, but to the others also. The series then used was McCulloch's Series, four books, and two I think of Chambers. McCulloch's was used in the junior classes of English schools. I remember

the petition about McCulloch's series being sent to me for report. They were not in my opinion well suited for use in the Educational Department. There were religious lessons in the books, but they were not used. There was a standing order of the Department to that effect. My opinion that they were not well suited was founded on Educational grounds. At that time missionaries were employed in the Department. I am not certain whether some were then missionaries or had only been so. The books were not intended to teach English to foreigners, but to teach children at home. From time to time I wrote little books of my own. It was no part of my official duty to do so. I had editions printed at the expense of Government, which I thought were sufficient for the consumption of the English schools. They were printed at different local presses. The Curator of the Book Department made all the arrangements. I afterwards caused some to be printed on my own account after several editions of each book had been exhausted. I first had an edition on my own account printed in 1861. I had them first printed on my own account I think entirely at Mr. Firth's. I transferred them to England in 1863. I understood they were largely consumed by the public in the Bombay Presidency and also out of it, and comparing the consumption with the number of scholars in the Bombay Presidency I found it must be so. \* \* \* If the use of them had been confined to Government schools I would not have printed them on my own account, although there might have been some profit arising from the sale. When I prepared the books I had no idea of profit." And Mr. Howard's statement in his memorandum of the 30th April is to the same effect. This evidence agrees with that of Mr. Firth, and also, except as to the date, of Mr. Bullock, who said that the first supplies from England came through him and arrived in April or May 1862, and in this he appears to be confirmed by some of the accounts which have been put in evidence. Now although the writer of the article could not be aware of what Mr. Howard would say, he had access to his published reports, and if he was not possessed of the information which Mr. Firth, who was called as a witness by the defendant, could give, I think he might, by the exercise of ordinary care, have obtained it. Mr. Howard's having subsequently printed the books on his own account does not, in my opinion, justify the conclusion that he had from

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M. MULL. the beginning a view to his own profit or advantage, and if the facts had been fairly stated, I think the imputation in the beginning of the 4th para. of the article of the 30th of April, that advantage was taken of the Christian allusions in the books formerly in use to disparage them, and that Mr. Howard undertook the preparation of his series for his own profit, or, in the language of the writer, as "a job worth doing," which appears to me to be the imputation intended to be made by that passage, would not fairly and legitimately have arisen. Of the truth of the next statement that the issue of the series was undertaken in the first instance Departmentally, the aid of various gentlemen in the department being liberally laid under contribution, the defendant has given no evidence and such evidence as there is in the case upon this point shows the contrary, it appearing from Mr. Howard's evidence that he himself paid Dr. Haig for his assistance, and that of Mr. Hughlings having been given as a friend, and in return for some assistance which Mr. Howard had rendered to him. I must, therefore, come to the conclusion that this passage is not true, and that if the writer had exercised ordinary care, he must have known that it was not. With regard to the fairness and honesty of the description of the books which follows and the criticism upon them, I have what I consider very reliable evidence.

His Lordship here reviewed the evidence, upon which he came to the conclusion that the part of the article which he was considering was not honestly written, and that the writer of it was not acting in good faith.

His Lordship then proceeded: The remainder of the article partakes, though to a less extent, of the character of the portion which I have been considering. In the next paragraph occurs this passage, "and though several gentlemen had given time to the preparation of the series, what so obviously natural as that the Director of Public Instruction should alone claim the copyright; put his own name on the title-page and then pocket the proceeds?" making an imputation that the plaintiff was dishonourably appropriating the profits of other persons' labour, for which, as I have already mentioned, there appears to be no foundation. And the next paragraph, beginning "Now it is credibly asserted that this monstrous perversion of the power and means placed at his disposal has been perpetrated by Mr. E. I. Howard," can

only be brought within the limits of fair and honest comment by supposing that the facts had been truly stated. In the following paragraph the writer says, "The press has no function if it is not to call for investigation into allegations of conduct so flagrant as this. All we ask for in the interest of education is a short public inquiry." If I could, upon the evidence which has been given in this case, believe that this was the object of the writer, and that the article was written in good faith with the view of obtaining a public inquiry, I should hold, as the learned Judge who rejected the plaint did, that it did not constitute a libel; but after an anxious consideration of the case, and with the greatest desire to uphold the liberty of the press and the freedom of discussion of the acts of public men, the value of which in this country as elsewhere cannot be estimated too highly, I feel compelled to come to the opposite conclusion, and must pronounce the article of the 30th of April to be libellous and without justification. A person, whether the publisher of a newspaper or otherwise, unless he acts in good faith, cannot, by saying that he is seeking for a public inquiry into the conduct of a public man, exempt himself from liability for publishing matter of a defamatory nature.

The judgment then proceeded to consider in detail the other articles, and finally a decree was given for Rs. 500, in addition to the Rs. 2,000 which the defendant by his written statement offered to pay.

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