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All that was necessary under the said Acts was the Collector's sanction for the institution of the suit. The plaintiff has procured the Collector's certificate and filed it in the suit.

Manckshah Jahangirshah, for the respondent.

JUDGMENT.

The following is the judgment of the Court delivered by

MELVILL, J.—The Court is unable to find, either in Bombay Act III of 1874 or in Act X of 1876, any provision excluding the jurisdiction of the Civil Courts in a suit brought, not on account of exclusion from office or service, but to establish a right to share in the emolument of a *vatan* which has ceased to be a service *vatan*. The Court, accordingly, making the rule absolute, reverses the decree of the District Judge, and remands the case for trial on its merits. Costs of this application to be borne by the defendant.

Decree reversed and case remanded.

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ORIGINAL CIVIL.

Before Mr. Justice West.

LUCKUMSEY ROWJI (*Plaintiff*) *v.* HURBUN NURSEY AND OTHERS (*Defendants*).* [6th September, 1881.]

Defamation—Defamation of a deceased person—Suit by surviving member of family of deceased—Cause of action—Damage to reputation of family of deceased by reason of defamation of deceased.

A suit for defamation can only be brought by the person who has been defamed. The fact that the defamatory statement has caused injury to other persons does not entitle them to sue.

A suit brought by the heir and nearest relation of a deceased person for defamatory words spoken of such deceased person, but alleged to have caused damage to the plaintiff as a member of the same family, *held* not maintainable.

[F., 18 M. 250=5 M.L.J. 89; Appl., 11 A. 104=8 A.W.N, 287; R., 17 B. 573 (575); 19 B. 717 (723); 26 B. 259=3 Bom. L.R. 878; 32 C. 1060=2 C.L.J. 396=9 C. W.N. 847; L.B.R. (1872—1892) 617.]

[581] SUIT for defamation. The plaint stated that the plaintiff was the cousin and the nearest relation and the heir of one Premji Ludha, deceased, who in his lifetime was the headman of the Karad caste, and a man who was generally respected by the Hindu community.

The defendants were leading members of the Dusha Oswal Wania caste, which was so closely connected with the said Karad caste in general and caste relation and by intermarriage as almost to form with it one united caste.

Premji Ludha died on 16th August, 1880, and at his funeral ceremony a large concourse of the said Karad and Dusha Oswal Wania castes, and also of other Hindu castes, assembled out of respect to his memory. The plaint alleged that "the defendants attended at the place where the said ceremony was being performed, and then and there falsely and maliciously spoke and published of the said Premji Ludha that he was 'patit' (thereby meaning that he was a man who had acted contrary to moral and religious principles), and that he was an outcaste sinful man,

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and a man at whose funeral it was improper for any of the members of the Dusha Oswal or Karad castes to attend, and threatened that any Dusha Oswal or Karad who continued to attend at the said funeral would be fined by the caste. The term 'patit' is a term of great opprobrium and reproach amongst Hindus." The concluding paragraphs of the plaint were as follows:—

"6. The defendants attended the said funeral ceremony having conspired together to speak and publish the said defamatory words, the said defendants well knowing and intending that such words would and should be hurtful to the feelings of the family and other near relations of the said Premji Ludha, and especially intending, by the use of such words, to disgrace and degrade the plaintiff and the family of the said Premji Ludha, and to lower them in the estimation of the said Dusha Oswal and Karad castes and of the Hindu community in general.

"7. In consequence of the defamatory words so spoken and published by the defendants as aforesaid, a large number of the persons who had assembled at the said funeral ceremony left it, **[582]** and the plaintiff and the family of the said deceased by reason of the premises have been lowered in their reputation, and have suffered much pain of mind, and the damages sought to be recovered in this suit.

"8. After and in consequence of the premises the plaintiff was deprived of the use and enjoyment of, and of all participation in the property of the united Dusha Oswal and Karad castes and of various privileges which up to that time he had enjoyed."

In their written statement the defendants contended (amongst other things) that the plaint disclosed no cause of action against the defendants. At the hearing the issues material for this report were the following:—

1. Whether the facts set forth in the plaint disclose a cause of action by the plaintiff against the defendants.

2. Whether the plaintiff can sue for loss of reputation, pain of mind, and damages sustained by the family of Premji Ludha.

Starling (*Lang* with him), for the plaintiff.—This suit is maintainable by the plaintiff. The plaintiff was a joint member of the family of the deceased Premji Ludha, and lived with him. To call Premji Ludha impure, therefore, was to call the plaintiff impure: Folkard on Libel, p. 76; *Davies* v. *Solomon* (1), *Roberts* v. *Roberts* (2). The only reported case in India is *Subbaiyar* v. *Kristnaiyar* (3). That case may seem to be against us; but there, however, the brother and sister were not living jointly, and the imputation complained of was merely of misconduct on the part of the sister. In England it has been held that a suit will lie for defamation of one partner: *Robinson* v. *Marchant* (4); *Harrison* v. *Bevington* (5).

Inverarity (with the *Advocate-General*), for defendants—The English cases cited are not in point. In *Robinson* v. *Marchant* the firm was slandered and the plaintiff himself was defamed. There is no case in which injurious words spoken of A causing damage to B have been held to give a cause of action to A. A libel on the dead has never been held to be a ground of a civil suit, **[583]** although it may justify a criminal proceeding: Folkard on Libel, p. 655. If Premji Ludha were living, the present plaintiff could not sue. Premji Ludha himself might have been unwilling to

(1) L. R. 7 Q. B. 112; 41 L. J. Q. B. 10.
(2) 33 L. J. Q. B. 249.
(3) 1 M. 383.
(4) 7 Q. B. 918.
(5) 8 C. & P. 708.

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bring an action. In *Davies* v. *Solomon* (1) the plaintiff did not allege damage sustained by himself. Here the plaintiff does not say he has been affected in caste; he was only threatened with fine. Loss of hospitality is not the natural consequence of a threat of fine; Folkard on Libel, p. 488; *Vicars* v. *Wilcox* (2). The damages must be wholly attributable to the defamation: *Lynch* v. *Knight* (3). Damages cannot be recovered for injury to another: Folkard on Libel, p. 489.

JUDGMENT.

WEST, J.—No cases have been cited from either the English or the Indian reports which are in point. Slander of A as a ground of action by B would lead to infinite litigation. I must find on the first issue in the negative, and dismiss the suit with costs.

The cases which approach most nearly to the present case are those of a husband joining his wife in suing for defamation, and those of a partner in a firm suing for a slander whereby other members are affected as well as himself. In the case of a husband and wife, the husband sues on account merely of the legal identity subsisting between him and his wife, which identity might also perhaps be considered as necessitating or, at any rate, justifying a similar course under the Hindu law. But the husband does not sue for hospitality denied to himself or other injury sustained by himself through the slanderous imputation cast on his wife. It is for the injury to the person slandered that the action lies, not for any remote injury, however palpable this in practice may be. It is not deemed a necessary or reasonable consequence that the husband should be even socially punished for misconduct imputed only to his wife. In the case of persons less closely connected, the reason is still stronger. It is not a reasonable consequence of a slander of one of two cousins that the other should be refused credit or hospitality, and the slanderer, therefore, is not answerable for such a refusal.

[584] In the case of partners, the one slandered—and, when there are more than one slandered, each of them—may apparently bring his action for the separable injury to himself, but not for the injury to the other. Otherwise, each member of a firm might bring as many suits for a general slander of it as the firm had members.

In India, the only reported case brought to my notice, which was that of a brother suing for defamation of his sister, is against the sufficiency of the cause of action here. The case is not really in point either way. What is important is, that when caste disputes are so frequent, and injurious imputations so common, there should be no example forthcoming of a suit maintained by one member, even of a joint family, for defamation of another.

Here the person defamed was dead, and what was said was that, he being "patit" or impure, those who paid him funeral honors would be fined by the caste. This implied a caste condemnation as the ground for degradation and its consequences. The exclusion from hospitality and use of caste property was not the proper and reasonable consequence of a mere menace of such condemnation. The injury, if any, inflicted has apparently been by those who exclude the plaintiff without reason, not by

(1) L.R. 7 Q.B. 112; 41 L.J.Q.B. 10. (2) 8 East I. (3) 9 H.L.C. 577.

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those who said that in certain circumstances he and others might or would be excluded from caste benefits and privileges.

Attorneys for the plaintiff.—Messrs. *Tobin* and *Roughton*.

Attorneys for the defendants.—Messrs. *Jefferson*, *Bhaishanker* and *Dinshah*.

5 B. 585=
6 Ind. Jur.
188.

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ORIGINAL CIVIL.

Before Mr. Justice West.

MACKINNON, MACKENZIE & CO. (*Plaintiffs*) *v.* LANG, MOIR & CO. (*Defendants*).* [6th September, 1881.]

Principal and agent—Right to sue—Liability of agent—Charter-party—Undisclosed principal—Actual knowledge—Disclosure of name of principal at time of making the contract—Presumption of liability of agent where name of principal not disclosed—Indian Contract Act, IX *of* 1872, *s.* 230.

The plaintiffs by charter-party contracted to let the steam-ship *Oakdale* to the defendants upon certain terms. The first clause of the charter-party stated that the plaintiffs "agreed as agents for owners of the said steamship," [585] and subsequent clauses provided that the owners should bind themselves to receive the cargo on board, and that the master on behalf of the owners should have a lien on the cargo for freight, &c. The charter-party was signed by the plaintiffs and defendants in their own names. The plaintiffs sued the defendants for breach of the charter-party in refusing to load the said steam-ship. *Held*, that the plaintiffs had contracted as agents, and were, therefore, not entitled to sue.

If a contract made by a person who is an agent, is worded so as, when taken as a whole, to convey to the other contracting party the notion that the agent is contracting in that character, he cannot sue or be sued on the contract.

Where one contracting party knows that the other is contracting as an agent for a third person whose name he also knows, the presumption laid down in cl. 2 of s. 230 of the Indian Contract Act (IX of 1872) does not arise, although at the time of making the contract the agent does not disclose the name of his principal. The essential point is the knowledge, and actual knowledge is equivalent to disclosure, the whole object of which would be to convey such knowledge.

[F., 7 B. 51 (65); 27 M. 315; L.B.R. 1872—1892, 658.]

SUIT on a charter-party. The plaint stated that "by a charter-party dated 19th May, 1881, it was agreed between plaintiffs and defendants that the defendants should load on board the plaintiffs' steam-ship *Oakdale* a full and complete cargo, and that the said steam-ship, on being so loaded, should therewith proceed to a safe port in the United Kingdom, and there deliver, &c.

"At the time of the making of the said charter-party the *Oakdale* was not in Bombay, and it was provided by the charter-party that, in case of the said ship not arriving in Bombay, and being ready to load on or before the 22nd day of June, 1881, the charterers or their agents should have the option of cancelling the said charter-party."

The *Oakdale* arrived in Bombay harbour early on the morning of the 22nd June, 1881, with her fore-hold entirely empty and ready to receive cargo. Her main and after-holds had cargo in them, which was all discharged by 1-30 A.M. on the morning of the 23rd June, 1881. The plaintiffs in the plaint charged that the said ship was ready to load on the 22nd day of June, 1881, and notice to that effect was given to the

* Suit No. 275 of 1881.