

be the rule which ought to be applied in cases where the Mayukha is the governing authority, it seems to me that in dealing with this case, coming from a district in which the Mitakshara is the paramount authority, we are not bound to apply this exceptional and anomalous rule of the Mayukha, and more especially so because that rule forms part of a scheme of succession to *stridhan*, which in most important particulars is entirely different from the scheme of the Mitakshara. According to this latter scheme, as already shown, the plaintiff is a nearer *sapinda* of Anandibai and her husband than either Kamaljabai or Tulajirav, and, therefore, the defendants cannot avail themselves of any *ius tertii* to resist the claim of the plaintiff to Anandibai's property. That claim has been properly allowed by the Subordinate Judge, and his decree must be confirmed with costs.

JARDINE, J.—The question of Hindu law which was argued before us has been dealt with by my brother Telang in an exhaustive judgment in which I concur. I now proceed to give the decision of the Court on the questions of fact, of which two were argued. (His Lordship then discussed the facts of the case, which are not material to this report.)

17 B. 127.

[127] CRIMINAL REVISION.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

QUEEN-EMPRESS v. BABAJI.* [8th April, 1892.]

Penal Code (Act XLV of 1860), s. 500—Defamation—Statement by a witness—Privileged.

A witness cannot be prosecuted for defamation in respect of statements made by him when giving evidence in a judicial proceeding.

[Diss., 32 C. 756 (758) = 2 C.L.J. 105 = 9 C.W.N. 911 = 2 Cr. L.J. 459; 14 P.R. 1393 (Cr.); N. F., 13 Cr. L.J. 275; 13 Cr. L.J. 494 = 15 Ind. Cas. 494 = 5 P.R. 1913 = 244 P.L.R. 1912 = 31 P.W.R. 1912 (Cr.); F., 17 B. 573 (575); R., 29 A. 685 = 4 A.L.J. 605 = 27 A.W.N. 235 = 6 Cr. L.J. 197; 19 B. 51 (62); 19 B. 340 (347); 27 C. 262 (263); 14 Ind. Cas. 659 = 23 M.L.J. 39 = (1912) M.W.N. 476; L.B.R. (1893—1900), 206; L.B.R. (1893—1900), 247 (248); 1 L.B.R. 84 (85); 3 L.B.R. 265 (269); 11 M.L.T. 416 = (1912) M.W.N. 393.]

THE accused was examined as a witness in a suit pending in the Mamlatdar's Court. In his deposition he stated that the complainant had once been convicted of an offence by a Criminal Court.

For this statement the complainant prosecuted the accused on a charge of defamation, under s. 500 of the Indian Penal Code, before a Bench of Magistrates at Poona.

The accused was convicted of defamation, and sentenced to pay a fine of Rs. 15, or, in default, to suffer simple imprisonment for fifteen days.

The High Court sent for the record and proceedings of this case in the exercise of its revisional jurisdiction.

There was no appearance for the Crown, or for the accused.

The judgment of the Court (BIRDWOOD and PARSONS, JJ.) was as follows:—

JUDGMENT.

In *Baboo Gunnessh Dutt v. Mugneeram* (1), the Privy Council decided that witnesses cannot be sued in a Civil Court for damages in respect of

* Criminal Revision No. 138.
(1) 11 B.L.R. P.C. 321.

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evidence given by them upon oath in a judicial proceeding. The judgment in that case contains the following observations:—

"Their Lordships hold this maxim, which certainly has been recognized 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 [128] suits for damages; but that the only penalty they should incur, if they give evidence falsely, should be an indictment for perjury."

With reference to this judgment, Mr. Justice Shepherd observed in *Manjaya v. Shesha Shetti* (1) that public policy must no less require that witnesses should not be exposed to the fear of prosecution, except the prosecution for perjury. And the learned Chief Justice of the Madras High Court applied in that case (which, like the present, was one where a witness was prosecuted for defamation in respect of a statement made by him when giving evidence in a judicial proceeding), the observations of Cockburn, C.J., in *Seaman v. Netherclift* (2) and of Field, J., in *Goffin v. Donnelly* (3) as to the rules of public policy which subordinated the interest of the individual to that of a higher interest, viz., public justice. With reference to the case of *Hinde v. Baudry* (4) Sir Arthur Collins remarked:—

"The Judges there said that the principle of public policy guards the statements of a witness against an action, whether the statements are malicious or not. I think the same observation will apply if the criminal law is set in motion and proceedings are taken under s. 500 of the Indian Penal Code. If the petitioner gave false evidence, he can be punished for that offence. I therefore hold that the petitioner was wrongfully convicted of defamation."

Following this ruling, and having regard also to *Dawan Singh v. Mahip Singh* (5) and *Bhikumber Singh v. Becharam Sirkar* (6), we reverse the conviction and sentence, and acquit the accused of the offence of defamation of which he has been convicted, and we direct that the fine, if paid, be refunded to him.

17 B.129=Chitty's S.C.C.R. 320.

[129] ORIGINAL CIVIL.

Before Mr. Justice Bayley (Acting Chief Justice), and Mr. Justice Farran.

J. G. SMITH AND OTHERS (Plaintiffs) v. LUDHA GHELLA
DAMODAR (Defendant).* [15th July, 1892.]

Contract—Construction—Custom or usage qualifying contract—Evidence—Evidence Act I of 1872, s. 92, proviso 5—Shipment, meaning of—Arbitration—Appointment of umpire by arbitrators—Mode of appointment prescribed by contract—Delegation by arbitrators of their right to appoint umpire.

On 18th April, 1890, the defendant signed a contract (No. 3053) to buy from the plaintiffs 25 bales grey dhoties "June shipment, in four lots, with an interval of four weeks." These goods were not supplied, as they could not be

* Small Cause Court Suit No. 25439 of 1891.

(1) 11 M. 477.
(4) 2 M. 13.

(2) 2 C.P.D. 53.
(5) 10 A. 425.

(3) 6 Q.B.D. 307.
(6) 15 C. 264.