

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Baboo Gunnesh Dutt Singh v. Mugneeram Chowdry and others from the High Court of Judicature at Fort William in Bengal: delivered 25th January 1872.*

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Present:

SIR JAMES W. COLVILE.  
SIR MONTAGUE E. SMITH.  
SIR ROBERT P. COLLIER.

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SIR LAWRENCE PEEL.

The material facts in this case may be very shortly stated.

It would appear that an affray took place between the partisans of the Chowdrys, who were the Defendants in the suit below, and of Baboo Gunnesh Dutt Singh, who was the Plaintiff in the suit below. The cause of the affray and the circumstances attending it are involved in some obscurity, but their Lordships think it sufficiently appears that it originated in some attempt on the part of the partisans of the Chowdrys to assert some real or pretended right which was resisted by the partizans of the Baboo Gunnesh Dutt Singh, and that in the course of that affray one of the Chowdrys was killed and some were wounded. It would appear that some of the Chowdrys who were Defendants in the suit below preferred a charge against Gunnesh Dutt Singh of having been accessory to this murder by inciting his partisans to violence, and Gunnesh Dutt Singh was brought before the magistrate, who, however, upon hearing the case dismissed it as against him for want of proof, and declined to commit him for trial. Thereupon Gunnesh Dutt Singh brought the present action.

This action has been called a suit to recover damages for defamation of character. Their Lordships are of opinion, with the High Court, that if it had been strictly speaking such an action it could not have been maintained, for they agree with that Court that witnesses cannot be sued in a civil court for damages, in respect of evidence given by them upon oath in a judicial proceeding. 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 suits for damages; but that the only penalty which they should incur if they give evidence falsely should be an indictment for perjury. But it appears to their Lordships that the suit of the Plaintiff in the Court below, although called a suit for defamation of character, may be substantially supported (the question is one of substance rather than of form) as an action for a malicious prosecution; and that being so, if we apply the principles of English law to the case, the burden of proof lying upon the Plaintiff would be this,—he would have to prove in the first place that the Defendants were the prosecutors of the criminal proceeding against him: next that they were actuated by malice, and, further that their proceeding was without any reasonable or probable cause.

It appears to their Lordships that the issues of fact as stated do in substance raise the same questions which would be raised in an action for malicious prosecution in this country. We find the first issue of fact to be stated thus:

“ Is there any proof of the existence of any  
“ enmity between the litigant parties previous  
“ to the commencement of the criminal prosecution? If it be in the affirmative then, whether  
“ or not the charge of complicity in the wilful  
“ murder of Kirtee Chowdry, deceased, preferred  
“ against the Plaintiff by the Defendants of the

“ first party, simply originated from motives  
 “ of humiliating the Plaintiff, and was therefore  
 “ entirely groundless.” The other issues of fact  
 appear to their Lordships to substantially state  
 the same questions which would come before a  
 judge and jury in an action for malicious pro-  
 secution in this country.

With respect to the proof of those issues, it  
 appears to their Lordships that the Plaintiff did  
 substantially prove that the Defendants, or at all  
 events two of them, were the prosecutors on  
 this occasion, although some little doubt is ex-  
 pressed upon that subject by the High Court.  
 It appears to their Lordships also that some  
 evidence was given by the Plaintiff of malice on  
 the part of the Defendants. That evidence was  
 not of a very clear or conclusive kind, but  
 their Lordships are disposed to say that the case  
 of the Plaintiff on this issue was on the whole  
 sufficiently made out.

We now come to the third issue, namely,  
 whether or not the Plaintiff has given any proof  
 of the want of reasonable and probable cause, or,  
 as it is put in the statement of the points in the  
 Court below, that the proceeding was altogether  
 groundless. Their Lordships are of opinion that  
 it rested upon the Plaintiff to prove this, or at the  
 least to give *prima facie* evidence of it calling for  
 an answer.

Their Lordships agree with this statement  
 which they find in the Judgment of the High  
 Court: “ We find on the record of the case that  
 “ the Plaintiff has given no other proof of his  
 “ innocence and of the falsehood of the state-  
 “ ments of these four appellants except a copy  
 “ of the order of the magistrate by which that  
 “ officer released the Plaintiff for want of proof.”  
 The Plaintiff, it is true, gave in evidence certain  
 depositions of the Defendants; but those depo-  
 sitions, taken by themselves, were evidence of his  
 guilt, not of his innocence.

Then what evidence does he give to rebut them?  
 He puts in the decision of the magistrate, which was



neither more nor less than this, (although it is a good deal amplified by the Sudder Ameen in the Court below,) that the case is not proved against him in the opinion of the magistrate.

Their Lordships are of opinion that this decision was no evidence whatever against the Defendants of the groundlessness of the prosecution. To hold that every person whom a magistrate refuses to commit for trial is entitled to maintain an action for malicious prosecution, on the bare proof (without more) of the dismissal of the charge, might very injuriously affect the administration of the criminal law. It was in the power of the Plaintiff himself to go into the witness box and give evidence of his own innocence. He might have proved where he was and what he did at the time of the affray. He might have stated all the circumstances within his knowledge. But he declines to give evidence.

Undoubtedly in this country, where a man sues for defamation of character, whether in the form of an action for a malicious prosecution or of libel or slander, it is expected that he who of all men is best able to give evidence of his own innocence should be put into the witness box; and it is very rarely indeed that a Plaintiff in any such suit obtains substantial damages if he does not give evidence or a good reason for not giving it.

Not only does the Plaintiff not give evidence himself, but although he calls witnesses for the purpose of showing malice on the part of the Defendants, he calls none for the purpose of establishing his own innocence, or of disproving the charge against him.

Under these circumstances their Lordships concur with the judgment of the High Court, which appears to be substantially based upon the ground that in their opinion no proof had been given, not even *prima facie* proof, certainly not such as the Plaintiff if he had been an entirely innocent man would have had it in his power to give, of the groundlessness of the charges preferred against him; in other words,

that there was no evidence on the part of the Plaintiff of want of reasonable and proper cause for the institution of this prosecution.

Their Lordships do not think it necessary to follow the High Court in some observations which they have made as to the effect of the evidence upon the Plaintiff's character; a subject on which they give no opinion; but on the ground already stated, namely, that they substantially agree with the finding of the High Court that no sufficient evidence was given on the part of the Plaintiff of this being a malicious and a groundless prosecution, their Lordships will humbly advise Her Majesty that the decision of the High Court should be affirmed, and this Appeal dismissed.

