

Radha Krishen Pratap Singh vs H.S. Bates on 10 May, 1950

Equivalent citations: AIR1953ALL302, AIR 1953 ALLAHABAD 302

JUDGMENT

Brij Mohan Lal, J.

1. This and the connected appeal No. 7 of 1948 are two appeals by the plaintiff under Section 12 (2), Oudh Courts Act (4 of 1925) against two decrees of a learned single Judge of the erstwhile Chief Court. The appeals were preferred before the amalgamation of the Chief Court with the Allahabad High Court.

2. The plaintiff is one Kunwar Radha Krishna Pratap Singh who was formerly the Assistant Manager of the Balrampur Estate. The appellant happens also to be related to the Maharaja, i. e., the proprietor of the estate. He brought the suit, which has given rise to these two appeals, to recover a sum of Rs. 2000 as damages for slander and libel against four persons, namely, (i) H. S. Bates, I. C. S., Manager of the estate, (2) Y. A. Dikshit, Confidential Adviser to the Maharani Saheba, (3) V. V. Singh, Private Secretary to the Maharaja and (4) the Maharaja. In the plaint, as originally filed, damages were claimed against the first three defendants only, and it was stated that the Maharaja, defendant 4, was a pro forma defendant. Later on the plaintiff got his plaint amended and claimed damages against the Maharaja also.

3. The taluqa known as Balrampur Estate was formerly under the superintendence of the Court of Wards. It was released in 1937. Ordinarily the proprietor is invested with full proprietary powers after release. There was, however, some talk about reserving some of the powers in favour of the Maharani as a condition of release. Such a step, if taken, would have increased the power and influence of Dikshit, Confidential Adviser of the Maharani. The relations between the plaintiff-appellant and Dikshit were by no means cordial. Naturally the plaintiff-appellant was not pleased at the prospect of Dikshit gaining more influence and power in the estate.

4. Early in February 1940, there was a rumour that the Maharaja's powers were being transferred to the Maharani. The plaintiff-appellant inquired of Bates whether there was any truth in the rumour. Bates gave no definite reply and asked the appellant his views. Thereupon the appellant presented before Bates on 9-2-1940, an unsigned draft of a representation which he intended to submit to the Maharaja. Bates advised the appellant not to press the representation and promised to look into the matter himself. The appellant took back the representation. On 26-2-1940, Bates sent a note to the appellant asking him to see him the next day. In reply the appellant sent to Bates the same representation together with a signed and a slightly amended copy thereof. The next day he went to see Bates. At that interview Bates called the appellant a "traitor to the Maharaja". The appellant took this remark to heart. He came back and wrote a letter to Bates in which he said that since he had been called a traitor he would no longer continue in service. He further informed Bates that he had

decided to withdraw his representation. The same day he addressed a letter of resignation to the Maharaja and stated therein that since his immediate officer thought that he had not been true to the Maharaja, he had decided not to continue in service. Bates placed the resignation and the representation before the Maharaja, who apparently got displeased with the appellant. On 1-3-1940, the Maharaja passed a long order accepting the resignation. The most offensive part of it was as follows:

"It is extremely wicked, ignoble and disloyal on the part of Mr. Radha Krishna Pratap Singh to make even veiled insinuations against Maharani Saheba. Mr. Radha Krishna Pratap Singh has not been true to the Maharani Saheba and myself. I am definitely of opinion that he is unworthy of being retained in the service of my Raj any longer."

5. The appellant based his claim for damages against Bates on the following grounds, namely, (a) that he called him a "traitor" to the Maharaja, (b) that he produced the same remarks before the Maharaja, (c) that he allowed Mukat Behari Lal, his P. A., to see the letter which the appellant had addressed to him (Bates) and in which he had reproduced Bates' remark and thus he published the said defamatory remark to Mukat Behari Lal, (d) that the libellous order passed by the Maharaja was really the outcome of his (Bate's) brain and that he had a hand in drafting it, and (e) that he published the aforesaid libellous order passed by the Maharaja to (i) his P. A. Mukat Behari Lal, (ii) his head clerk Har Bishen Dayal, and (iii) Mr. Waugh I. C. S., an Adviser to the estate.

6. There were also allegations to the effect that he (Bates) had published his own slanderous remark and the Raja's libellous order to other persons also, but since that part of the allegation has not been proved, it is unnecessary to take notice thereof. It was also alleged that Bates was a party to a conspiracy which existed between him and Dikshit and V. V. Singh to harm him (appellant) and to oust him from service. This has also not been proved and it is, therefore, unnecessary to refer to this part of the case.

7. Against Dikshit the appellant's case was that he had published, (1) to Suraj Narain Singh and to his (appellant's) father Capt. Adhya Pratap Singh the libellous order passed by the Maharaja, and (2) that he had called the appellant "intriguer and disloyal". Against him also there were allegations of conspiracy and of having published the Maharaja's order to other persons. These allegations have not been proved and may, therefore, be ignored. Against him also there was a further suggestion that the Maharaja's order was the outcome of his brain and that he had had a hand in getting that order passed. This part of the case has also not been proved and may not be referred to any more.

8. It is unnecessary to state what the appellant's case was against V. V. Singh and the Maharaja because the claim was dismissed against both of them by the first two Courts and the order of the lower appellate Court, dismissing the said claim, was not challenged by way of second appeal in the High Court. The dismissal has become final qua these two defendants.

9. The defence put forward by Bates was that he, as superior officer, had the privilege to comment on the appellant's conduct, that none was present when he called the appellant a "traitor to the

Maharaja" and, therefore, the appellant had no cause of action on the basis of that remark. He contended that he repeated the same remark before the Maharaja in the performance of his duties and, therefore, the publication was privileged. He denied having any hand in securing the Maharaja's order, although he admitted that the Maharaja had discussed the matter with him before passing the order and had obtained his approval to the said order. It was next pleaded that the communication to Mukat Behari Lal, Har Bishen Dayal and Waugh had been made in due course of business and as such was privileged. He denied having been actuated by any malice towards the appellant.

10. Dikshit denied having uttered any slanderous remarks or having published the Maharaja's order. It was next contended by him that neither his remark nor the Maharaja's order was defamatory. What is significant in his defence is that he pleaded neither privilege nor justification.

11. The learned Munsif upheld Bates' defence in toto. As regards Dikshit, he was of the opinion that his remark was defamatory and that he did publish the Maharaja's order. He went on to hold that the appellant's friends had tried to intercede on his behalf and the Maharaja's order had to be made known to those friends of the appellant to explain the circumstances in which the order was made. In his opinion the application of the order in such circumstances was privileged. Lastly he upheld the plea of justification which, as already noted, had not been raised in the pleadings.

12. The plaintiff went in appeal. The learned Judge of the lower appellate Court upheld Bates' defence. As against Dikshit he was of the opinion that there was no justification nor privilege. He upset the trial Court's finding, namely, that the Maharaja's order was published because the appellant's friends had tried to intercede on his behalf. Lastly he found malice proved on the part of Dikshit. On these findings he decreed the claim in toto against Dikshit.

13. The appellant filed a second appeal against the decree of the lower appellate Court in so far as it dismissed his claim, against Bates. Dikshit preferred an appeal against the same decree inasmuch as it decreed the claim against him. Both appeals came before a learned single Judge of this Court who dismissed the appellant's appeal and upheld the dismissal of his claim against Bates. He allowed Dikshit's appeal on the ground that there was justification and privilege. Further he held that the appellant had been indulging in intrigues against Dikshit and, therefore, Dikshit was justified in using strong language against the appellant.

14. The appellant has now preferred two appeals. The present appeal (NO. 6 of 1948) is directed against Bates whereas the connected appeal (NO. 7 of 1948) has been preferred against Dikshit.

15. A preliminary objection has been taken by the learned Counsel for the respondents to the effect that no leave should have been granted to the appellant to prefer these appeals under Section 12 (2), Oudh Courts Act. The first question, therefore, that arises for decision is whether it is open to the respondent to put forward such a plea after the case has been certified by the learned single Judge to be a fit one for appeal. The learned Counsel for the respondent has cited a number of authorities which go to show that such a question can be raised before the Bench which hears the appeal. By way of example, reference may be made to the case of Mohammad Ja, far v. Mt. Barka, 1943 Oudh w.

n. 457 (i). In that case the case had been certified to be a fit one for appeal, but the Bench hearing the appeal did come to the conclusion that the leave should not have been granted. This view is in conformity with the practice followed by their Lordships of the Privy Council who also allow a respondent to challenge, if he wishes, the certificate granted by the High Court. In the case of *Radha Kishan Das v. Rai Kishen Chand*, 28 Ind. App. 182 (P.c.), their Lordships refused to hear the appeal notwithstanding the fact that a certificate had been granted by the High Court, In view of these authorities, and also in view of the fact that the order granting Leave had been passed ex parte, permission was given to the learned Counsel for the respondent to challenge the order granting leave.

16. The contention put forward by the learned Counsel for the respondent was that the case involved really a question of the interpretation of the Maharaja's order on the appellant's representation and that there was a string of authorities which lay down that leave should not be granted where the only dispute whether a document had been rightly interpreted by the single Judge. In support of his contention he relied on the cases of *Brij Bhukhan v. Bhagwan Dutt*, 1943 Oudh W. N. 404; *Uman Shankar v. Ashraf Husain*, 1943 Oudh W. n. 372 and *Bisheshwar Dayal v. Lachman Ram*, 1926-3 Oudh W. N. 576. These authorities do support the learned Counsel's contention, but the present case is not one in which the only question is the interpretation of the Maharaja's order and the appellants' representation. Several other legal problems of great importance also arise for decision. In the first place it is contended by the learned Counsel for the appellant that the plea of justification should not have been upheld because it had not been raised in the pleadings. It is next contended by him that the finding on the plea of justification was a finding of fact, and since the finding on that point had been recorded in the negative by the lower appellate Court, it was not open to the learned single Judge to upset that finding. Again it was contended on behalf of the appellant that there was neither a finding nor an issue about Dikshit being privileged. There was an issue as to whether Bates and the Maharaja were privileged, but now whether Dikshit was privileged. The question whether the learned single Judge of this Court was justified in upholding the plea of privilege is also one of great importance. In any case the question arises whether or not the learned single Judge acted contrary to recognised principles and precedents in giving Dikshit the advantage of the plea of privilege. In the circumstances the preliminary objection raised by the learned Counsel for the respondent is overruled.

17. The learned Counsel for the respondent next cited the case reported in *Beni Madho v. Harihar Prasad*, 1946 Oudh W. N. 300, and contended that the appellant's learned Counsel should be kept confined to the points on which the learned single Judge gave leave to appeal. The learned single Judge, however, did not specify in his order granting leave the particular point on which he desired the appeal to be heard. The relevant portion of his order is as follows : "I grant the declaration that the cases are fit for appeal to a Bench of two Judges." It will thus appear that he considered the whole case fit to be heard by the appellate Bench. In the circumstances the contention put forward by the learned Counsel for the respondent, namely, that the appellant's counsel should be kept confined to certain given points must also be overruled.

18. The case against Bates may be taken up first. It is admitted by him that he called the appellant a "traitor to the Maharaja". But it has also been found as a fact that none else was present in the room

when this remark was made. Bates rightly contends that no action for defamation can be based on the basis of this utterance because none else heard it. The essence of a cause of action for defamation lies in the fact that the person defamed is lowered in the estimation of others. If none else has heard the defamatory remark, no suit is maintainable for damages for defamation. It is immaterial that the plaintiff's feeling's were hurt by the said remark.

19. Another defence put forward by Bates is that he, as the superior officer, had a qualified privilege to comment on the conduct of his subordinate. This contention is also well founded. Bates was the Manager of the Estate. The appellant was the Assistant Manager. The representation which he had made related to the affairs of the estate. In the circumstances Bates had the privilege of expressing his opinion and making comments on the representation and on the appellant's conduct according to his own light. Even if Bates's remark was incorrect, it was privileged, unless it was malicious. In the present case there is the finding of the lower appellate Court that there was no malice on the part of Bates. This finding, as laid down by their Lordships of the Privy Council in *G. Sabhapathi v. C. Huntley*, A. I. R. 1938 P.C. 91, is a finding of fact and must be accepted as correct.

20. The next grievance put forward by the appellant is that Bates's conduct became actionable when he published his own slanderous remarks to the Maharaja. In order to appreciate this point, it is necessary to narrate the circumstances in which this publication was made. It will be remembered that the appellant had submitted his resignation to the Maharaja and had sent it through Bates. It was, therefore, Bates's duty to place resignation before the Maharaja. The relevant portion of the resignation runs as follows:

"As my immediate officer thinks I have not been true to your honour, I think it unworthy of me to continue in service any more and beg to resign."

When this resignation was placed before the Maharaja, he naturally asked Bates what remarks he had made and why. After all the appellant was the Maharaja's relation, and the latter must have been anxious to protect his interest also. It was then Bates' duty to tell the Maharaja, that he had called the appellant "a traitor," and that he had done so after seeing the representation which the appellant had drafted. Naturally, the Maharaja must have liked to see the representation himself. It is, therefore, obvious that Bates reproduced his remarks before the Maharaja in the performance of his duty. The occasion was, therefore, privileged. It was laid down in the case of *Adam v. Ward*, (1917) A. c. 309 at p. 334, that a privileged occasion is, in reference to qualified privilege, an occasion where the person who makes a communication has an interest or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This test is satisfied in the present case. Therefore, the publication of the remarks to the Maharaja was privileged and was not, in the absence of malice, actionable.

21. Next comes the appellant's grievance, namely, that the Maharaja's order was published to Mukat Behari Lal and Har Bishen Dayal. After passing the order, the Maharaja handed it-over to Bates who was asked to "take necessary action thereon." Mr. Bates made the following: note on it :

"P. A. Copies to Kunwar Radha Krishna Pratap Singh and to Mr. Waugh. Then file in confidential box."

Thus the file came to the hands of Mukat Behari Lal, P. A. The latter gave the file to Har Bishen Dayal, head clerk, to prepare typed copies of the order. Har Bishen Dayal prepared the copies. Thereafter a copy was sent to the appellant. Thus both Mukat Behari Lal and Har Bishen Dayal had an opportunity of reading the Maharaja's order. This was done by them in the performance of their duty. Bates was not expected to copy out the whole order himself and to send it himself to the persons concerned. When an official act is to be performed, naturally it must necessarily pass through the hands of subordinates. Publication to such subordinates is always privileged. In this connection it is necessary to reproduce the following passage from Gatley on Libel and Slander, Edn. 3, pp. 288-289 :

"Defamatory but privileged words do not lose their privilege by being dictated to a typist or copying clerk in the reasonable and ordinary course of business. If a business communication is privileged, as being made on a privileged occasion, the privilege covers all the incidents of the transmission and treatment of that communication, which are in accordance with the reasonable and usual course of business for a business man to dictate his business letters to a typist even though these letters contain statements defamatory of third person."

The publication to Waugh, Adviser to the Estate, was also made in the discharge of duties and was privileged. Bates had a duty cast upon him to inform Waugh that the appellant had been removed from service. He was doing so under the order of the Maharaja.

22. The letter Ex. A5 which the appellant had addressed to Bates, and in which he had reproduced Bates' remark, was not marked "personal" or "confidential". In due course it was placed on the file and was seen by Mukat Behari Lal though not by Har Bishen Dayal. The file had to pass through the hands of the P. A. and publication to the P. A. could not be avoided. In all such cases subordinates handle a file and get an opportunity of reading it, but the superior officer cannot be held liable for publication of any defamatory matter that may be contained in it. It is too much to expect that he should himself deal with every file so as to deny access to it to his P. A. even. In my opinion Bates has not rendered himself liable for damages by permitting his P. A. to have a look at the appellant's letter EX. A5.

23. Bates has omitted that the Maharaja discussed his order with him before signing it and the order was passed with his (Bates's) approval. The question is whether Bates incurred any liability by reason of having discussed the said order with the Maharaja and of having approved of it. It must be remembered that the Maharaja was the superior officer and employer. If the Maharaja took him into confidence and told him that he was offended at the appellant and intended to pass an order of a certain nature, it was not expected of Bates to oppose his employee particularly when he (Bates) also had not approved of the appellant's conduct. If he expressed his approval of the proposed order, he did not thereby become the author of the order. The order remained the order of the Maharaja and the responsibility for passing that order rested with the Maharaja.

24. For the above reasons the appellant has no cause of action against Bates. His claim has been rightly dismissed against Bates. Appeal no. 6 of 1948 preferred by the appellant against Bates fails.

25. Next comes the appeal preferred against Dikshit. The findings against him are that he did publish the Maharaja's order to Suraj Narain Singh and to Capt. Adhya Pratap Singh and did call the appellant an "intriguer and disloyal." The circumstances in which the publication was made to Suraj Narain Singh are that the latter was camping at Balrampur and went to see the Maharaja. He did not utter a word about the appellant. While he was at the Maharaja's place, Dikshit inquired of him if he would like to pay his respects to the Maharani. He replied that he would be delighted to do so. Dikshit then arranged for an interview. In his interview with the Maharani, Suraj Narain Singh did not talk about the appellant. It was the Maharani herself who introduced the subject and remarked that the appellant was doing propaganda against the transference of power to her. After the interview was over, Dikshit went inside, brought out a file and showed the appellant's representation and the Maharaja's order to Suraj Narain Singh. The lower appellate Court has recorded a definite finding that Suraj Narain Singh had done nothing to intercede on behalf of the appellant and that the publication of the Maharaja's order to him was gratuitous. This finding has to be accepted.

26. As regards the publication to Capt. Adya Pratap Singh, the finding of the lower appellate Court is that Dikshit called him twice to his place and in the first meeting he translated the Maharaja's order to him. It may be remarked at this stage that Capt. Adya Pratap Singh does not know English. The Maharaja's order was written in English. In the second meeting Dikshit suggested that he would arrange an interview between Capt. Adya Pratap Singh and the Maharani. The communication of the Maharaja's order by Dikshit to Capt. Adya Pratap Singh had been made before the proposed interview took place. In his case also the publication was gratuitous.

27. It has been held by the learned Single Judge that the appellant's representation contained insinuations and innuendoes against Dikshit and that Dikshit, in his defence, published the Maharaja's order in order to refute those insinuations and innuendoes. In this connection it may be pointed out that Suraj Narain Singh and Capt. Adya Pratap Singh, to whom the publication was made, had not seen the appellant's representation and no question arose of Dikshit clearing his conduct before these two persons. What he did was first to place before them the representation which contained matters defamatory of himself and then to retaliate by publishing the Maharaja's order which was defamatory of the appellant. In other words, he was trying to find out a pretext for publishing the Maharaja's libellous order.

28. Even where a person is defamed, and the law gives him an opportunity to defend himself, he may publish such matters as will clear his own conduct. Cases have occurred where a person to defend himself, has been permitted to use strong language. But the privilege does not extend to defame one's opponent. If such defamation does not clear his own conduct, if the persons defending himself goes to the extent of describing his opponent a "liar," it may be argued that in his zeal he used necessarily strong language and he may be excused. But he does not clear his own conduct by simply defaming his opponent. Therefore defamation of one's rival carried out by way of retaliation is not permissible. Even if Dikshit's object was to prove that the insinuations made against him in

the representation were false, that object could not be achieved by telling others that the Maharaja considered the appellant a "wicked and ignoble" person. Similarly he could not disprove the said insinuations by stating that the appellant himself was an "intriguer and disloyal." The appellant's unworthy conduct, if any, could not be a justification of Dikshit's conduct. In the circumstances Dikshit cannot be held to have possessed any privilege to either communicate the Maharaja's libellous order or to call the appellant an "intriguer and disloyal." The learned single Judge's finding on the point cannot be upheld. As already stated no such privilege had been claimed by Dikshit in the pleadings and there was no issue as to whether Dikshit enjoyed any privilege.

29. The next point to consider is whether there was justification in the sense that the remarks published were true; if the remarks were true, action will fail even if the publication was malicious. But the plea of justification must always be raised in the written statement. Not only should justification be specifically pleaded but should be strictly proved. This was laid down in the case of *C. M. G. Ogilvie v. Punjab Akhbarat and Press Co., Ltd.*, Lahore, A. I. R. 1929 Lak. 561. In the present case one finds that no plea of justification had been raised in the pleadings. But one finds that there was an issue on the point. This circumstance has enabled the respondent to put forward the argument that since an issue was framed, the appellant cannot complain that he was taken by surprise. He knew what case he had to meet. There is force in this argument and the respondent was, therefore, allowed to rely on this plea, although it had not been raised in the pleadings.

30. But it must be remembered that the onus to prove justification always lies on the defendant. In other words it is for the defendant to lead evidence to prove that the defamatory statements made about the plaintiff were true. In the present case the defendant respondent led no evidence. 'His contention is that the appellant's conduct as disclosed in the representation proves justification. It is, therefore, necessary to examine the representation presented by the appellant in order to see whether this representation (justified ?) the slanderous and libellous remarks made about the appellant. The original unsigned draft representation runs as follows :

"To Sri Man Maharaja Sahib Bahadur Bakampur Raj, Through H. S. Bates Esq.,
I.O.S., Manager, Balrampur, Raj.

May it please your honour, Most respectfully I beg to lay the following for your kind consideration :

1. That though, we have a Maharaja--with a majestic personality, wonderful memory, untiring energy, radiant health--Free of all evils and under the influence of no one--Always eager to hear patiently the Riyaya of the Raj and redress their grievance--Touring in all the corners of the Raj at a good bit of inconvenience and personal discomfort--Of firm determination, still ready to yield to reason--Always ready to learn and look into things still least interfering in the day-to day administration of the various departments and exceedingly polite to services--the qualities that make you so dear to all and an ideal Maharaja for running the Estate on democratic lines.

2. That though we have a Maharani Sirkar coming out of a family of administrators of high repute and calibre and known to be absolutely devoted to Maharaja Bahadur and like an ideal "Hindu Dharma-Patni" wanting nothing for herself and ready to take any risk and do any sacrifice for the Pati."
3. That though we have Mr. Bates as Manager of the Raj who is a senior member of Civil Service, extremely kind and polite to his subordinates, always ready to yield to reason and loved alike by services and riyaya for his kind and sympathetic heart and saintly ways and highly loyal and faithful to Maharaja Bahadur and chiefly responsible for the release of the Raj from Court of Wards.
4. That though masses are solidly for Maharaja Bahadur whom they love and admire for his good qualities and for whom if the need be and they know of it they may do any sacrifice.
5. That though such a district as Bahraich where we have comparatively speaking less influence thought fit to praise the qualities of Maharaja Bahadur by presenting him various addresses.
6. That still it is a strong rumour that Maharaja Bahadur has to sit with Maharani Sirkar in Purdah to deal important papers which if true will undermine Maharaja Bahadur's prestige and position in public eye and may be resented by every faithful citizen and servant.
7. That still it appears to be a fact that everything is not so smooth running and plain sailing as it should be and there appears to be a sense of uncertainty and insecurity prevailing in services and certain amount of dissatisfaction all round.
8. That these fears have naturally arisen due to successive retrenchments and other economic measures which were the outcome of the bogey of financial crisis raised by brainy people when Mr. Bates was out in England on leave and ended in hardships to certain humble servants of the Raj and increase in deputation allowance of the author of the retrenchment scheme on top of annual graded promotion. What was the real motive of these brainy people has yet to be probed into.
9. That still one finds that a particular report written about Maharaja Bahadur which is said to be not very complimentary to Maharaja Bahadur is claimed to have been written with the help of one of Maharani Sirkar's trusted servants.
10. That still it is said that the period of Court of Wards was extended for the first time on account of opposition from a certain quarter not unknown to your good-self and even at the time of release taking advantage of these, certain demands it is said were pressed on behalf of Maharani Sirkar which created a dead-lock and it is said that ultimately an English Officer had to remark that he was fighting like that for

sirkar and who was to fight for Maharaja and decline to agree with the request in its entirety.

11. That since your honour mentioned my name in connection with Private Secretary's appointment there has been a great intrigue against me and certain gross untruths and deliberate lies were told against me to Mr. Bates and to other respectable personalities which I regard as my duty to expose and fight.

12. That though Maharaja Bahadur is the constitutional head of the Balrampur administration still it is an open secret that he could not have a secretary of his choice even when he gave an option as wide as to give him any English man and the news is all the more discomfoting when one hears that even Maharani Sirkar opposed Maharaja Bahadur's wishes.

13. That there are a good few other rather unpleasant things which I do not want to mention here.

14. That these things are bound to cause a serious rupture in the house some day and I consider it my duty to struggle to stop if after carefully studying things and thinking out ways and means for doing so.

15. That this cannot be done and should not be done as long as I am in regular service and I have, therefore, decided to go on long leave.

16. I, therefore, beseech your goodself to grant me all my due leave and order "immediate payment of my dues and to relieve me early so that I may : .

fight for your cause as an independent and faithful citizen and relation.

struggle to remove the sense of unsecurity and uncertainty from service.

give Maharani Sirkar frank and correct advice if and when needed.

help your honour and Mr. Bates to establish constitutional rule in Balrampur.

enlighten the masses on their duty to your goodself and the Raj.

Expose the intriguers and hypocrites who shed gallons of crocodile tear and profess tons of love to you and still talk lot of nonsense and indulge in undesirable propoganda against your honour, And thus do real service to the Raj which may be remembered long after I am dead and gone.

Thanking your goodself, Maharani Sirkal and Mr. Bates for all the kindness and special considerations shown to me.

I have the honour to be, Sir, Your most obedient servant."

The fair copy of the representation had been slightly altered in the following respects, namely, the last two lines of paragraph 1 run as follows :

'An ideal Maharaja for running the estate on constitutional lines with the help and advice of his Manager.'

For paragraph 6 in the draft, the following paragraph was substituted, namely, "That still it is a strong rumour that Maharaja Bahadur has to sit with a 'body of administrators' in purdah to deal important papers which if true is not only wrong from legal and constitutional point of view but is bound to undermine Maharaja Bahadur's prestige and position in public eye and may be resented by every faithful citizen. In view of what I have said above there is no need at all of these 'administrators' but in case any body feels that there is any need of a helper or helpers this privilege should go to the riyaya of the Raj who have an inherent and birth right to advise their Maharaja."

31. The learned single Judge of this Court has interpreted the appellant's representation as containing "an implied threat ... to the estate authorities that the appellant Intended to start a mass agitation in Balrampur." Further he held that the intention of the appellant was to "arouse the tenantry" against the Maharaja. There is nothing in the appellant's representation to suggest that he wanted to do anything against the Maharaja. As already stated, the respondent's evidence on this point is nil. Since the respondent wants to base the plea of justification on the appellant's statement, that statement must be taken as it stands. No words which do not exist in it should be read in that statement. The appellant enumerates at the end of the representation the points towards which his efforts would be directed after he is relieved from service. He says that he would "fight for your (Maharaja's cause as an independent and faithful citizen and relation" and "enlighten the masses on their duty to your goodself and the Raj" since he wants to act as a "faithful" citizen, it is not possible to interpret this statement of his as implying a threat to do something adverse to the Maharaja. Similarly he wants to enlighten the masses of their duty towards the Maharaja. This statement of his should not be construed as a threat to misguide the tenantry and to induce them to claim any rights adverse to the Maharaja. He wishes to remove the sense of insecurity and uncertainty from the minds of the servants. This too was not any objectionable activity. He wants to give frank and correct advice to the Maharani "if and when needed." Lastly he wants to "help your honour (Maharaja) and Mr. Bates to establish constitutional rule in Balrampur." The use of the words "constitutional rule" is unfortunate because after all the Maharaja is a proprietor and not a ruler. But what is significant is that he offers "his help" and not opposition. If the appellant's own representation is to be made the basis of founding the plea of justification, it should be interpreted according to the plain meaning of the words it contains. It does not justify the inference that the appellant wanted to start a mass agitation against the Maharaja or to arouse the tenantry against him.

32. There is no doubt that the appellant says in para. 6 that the Maharaja has in the matter of administration to consult other, either the Maharani Sirkar or his advisers. But the conduct attributed to the Maharaja cannot by any stretch of reason or imagination be described as discreditable. There is nothing objectionable in an owner of a big estate, like Balrampur, consulting his advisers or his wife. Perhaps the appellant feared that the adviser, of whom he dreaded Dikshit the most, might gain more influence, and this might lower the Maharaja's prestige in the eyes of the public. This remark has been interpreted by the trial Court (which interpretation was approved by the learned single Judge) that the appellant wanted to paint the Maharaja as an "imbecile." In my opinion this inference is too far fetched to be accepted as correct.

33. The appellant has pointed out in para 8 that during Bate's absence, some of the interested persons drew up a scheme of retrenchment which involved hardship on some of the servants of the Raj, but as a result of that scheme their own employments were enhanced. There was nothing objectionable in bringing this point to the notice of the Maharaja.

34. He states that a report, not very complimentary to the Maharaja, was written by one of the Rani's trusted servants. Possibly he means Dikshit. Ho again refers to the efforts which were made for securing powers for the Maharani at the time of the release of the estate from the superintendence of the Court of "Wards. This reference is borne but by EX. p. W. 12/1. Again he makes a mention of the fact that there was once a talk of the Maharaja appointing him (appellant) as his private secretary, and that this led to an intrigue against him. He adds that there was a difference of opinion between the Maharaja and Maharani on the question of the appointment of the former's secretary. In para. 13 he says that there are some other unpleasant things which he does not want to mention. In para. 14 ho remarks that events may cause a rupture in the family in the future. Finally he adds that so long as he is in service ho cannot act freely and "express the intriguers and hypocrites who shed gallons of crocodile tear and profess tons of love to you and still talk lot of nonsense and indulge in undesirable propaganda against your honour."

35. Obviously he meant that Dikshit and others, who profess to be the Maharaja's faithful servants, but who in his opinion were not really his well-wishers, needed to be exposed and therefore he wanted to perform the duty of bringing the true facts to the Maharaja's notice. In his opinion he could do this only after he had ceased to be a servant of the Raj.

36. It must be remembered that the appellant is one who has had his education in foreign countries. He in his own way wanted to be helpful to the Maharaja. His representation gives me the idea that he never Avanted to be hostile to the Maharaja hut he wanted to rid him of certain persons, including Dikshit, whom he believed, rightly or wrongly, to be engaged in anti-Maharaja activities. According to his views it was his duty to prevent these persons from gaining influence and strength. He feared that those persons might load the Maharani to do certain acts which might create a rupture between the Maharaja and the Maharani at some future time. He might have been misguided and mistaken, but certainly lie was not anti-Maharaja or anti-Maharani. His targets were Dikshit and his friends, and neither the Maharaja nor the Maharani. In the circumstances it was not correct to say that he made "veiled insinuations against the Maharani." He certainly did not deserve the libellous remark, namely, "extremely wicked, ignoble and disloyal." In the circumstances the

plea of justification recorded by the learned single Judge cannot be upheld.

36a. It was further argued on behalf of the appellant that the finding recorded by the lower appellate Court, namely, that justification had not been proved, was a finding of fact and that the learned single Judge could not upset it. Since I have agreed with the lower appellate Court on merits, it is unnecessary to enter into this question.

37. For the above reasons, the appellant's claim succeeds against Dikshit.

38. Next comes the question of damages. The appellant had claimed a sum of RS. 15000 as damages in the notice but he brought the suit to recover Rs. 2000 only because his object was to vindicate his honour and not to make money. Since the claim has been decreed against one of the defendants only, it will be sufficient to grant him a decree for Rs. 3000 only. He shall get costs from Dikshit in proportion to success in all Courts.

39. For the reasons stated above, the appeal (NO. 6 of 1948) against Bates fails and is hereby dismissed with costs.

Sankar Saran, J.

40. I am in general agreement with my learned brother on the questions that have arisen in this appeal, I should, however, like to add a few words of my own, specially with regard to the preliminary objection that no leave to appeal should have been granted in this case. It is necessary to examine the provisions of Sections 12 and 14, Oudh Courts Act, and the provisions of Sections 109 and 110, Civil P. C., relating to appeals to the King in Council as also Clause 10, Letters Patent of the Allahabad High Court which provides for appeals to the High Court from orders of one Judge of the same Court.

41. Section 12 (2), Oudh Courts Act, runs as follows :

"Except as otherwise provided by any enactment for the time being in force, an appeal from any appellate decree made by a single Judge of the Chief Court shall lie to a Bench consisting of two other Judges of the Chief Court, if the Judge who made the decree declares that the case is a n't one for appeal."

42. Clause 10 of the Letters Patent has similar provisions. It provides that an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court "where the Judge who passed the judgment declares that the case is a fit one for appeal."

43. Section 14, Oudh Courts Act, provides that a single Judge or a Bench of the Judges of the Chief Court can refer for the decision of a larger Bench any question of law or construction of any document, etc.

44. It will appear from a perusal of both, Section 12 (2), Oudh Courts Act, and Clause 10 of the Letters Patent, that an appeal is provided for where a Judge who passed the judgment "declares that the case is a fit one for appeal." The language is identical. This declaration by a Judge that a case is a fit one for appeal has, to my knowledge, never been challenged in appeal in the Allahabad High Court. At least, I have not been able to lay my hands on any case where this question was raised. In the Oudh Chief Court, however, there are a fairly large number of decided cases where the propriety of the declaration made by the Judge who passed the judgment and granted leave to appeal has been challenged.

45. It was contended before us that the right under Section 12 (2), Oudh Courts Act, is analogous to the right of appeal as contained in Sections 109 and 110, Civil P. C. Now Section 109, Civil P. C., provides an appeal to His Majesty in Council if it is certified to be a fit case for appeal. Section 110, Civil P. C., lays down three conditions, viz., that the appeal must be valued at RS. 10000 or upwards, or the decree must involve some question respecting property of that valuation, or the decree affirms the decision of the Court immediately below the Court passing the decree, or the appeal must involve some substantial question of law.

46. Upon an examination of the provisions of Section 12 (2), Oudh Courts Act, and Sections 109 and 110, Civil P. C., I am unable to hold that they are analogous. If they are analogous at all, they are analogous to Clause 10 of the Letters Patent of the Allahabad High Court. But from the early times, indeed ever since the Chief Court was established, it seems that a very restricted interpretation has been given to Section 12 (2), Oudh Courts Act, and words have been imported in it which upon a plain interpretation of the section it is not possible to import. In *Bisheshwar Dayal v. Lachman Ram*, 3 Oudh W. N. 570, there are two cases. In one of them *Usuf Ali Beg v. Nathu*, 3 Oudh W. N. 574, a learned Judge of that Court held that a certificate of fitness for an appeal under Section 12 (2), Oudh Courts Act should be granted only when the decision is (1) opposed to any general principle of law, or (2) it involves a question of public interest, or (3) is contrary to any recognised precedent."

No reasons, however, were given for the view expressed. In the other case, *Bisheshwar Dayal v. Lachman Ram*, 3 Oudh W. N. 576, *Gokuran Nath Misra J.*, referred to the rights of appeal conferred by the Letters Patent of a High Court but finally came to the following conclusion :

"..... One has only to turn to Section 109(e), Civil P. C. (V of 1908), where such words do exist. It has been held by the various High Courts in India that, where a case has to be certified as a fit one for appeal to His Majesty in Council, the interpretation to be put upon these words must be a very restricted interpretation. Clause (c) of that section is intended to meet special cases, such for example as these in which the point in dispute is not measurable by money, though it may be of great public or private importance . . . Applying this test, I think I can safely hold that the point involved in this case is not a point of any general importance. Indeed the point involved is not even a substantial point of law."

This case appears to be the leading case on the subject and all subsequent rulings have followed this case or adopted the principles laid down in it.

47. In *Dayana Ulla v. Atia Khanam*, 1040 oudh W. n. 193, a Bench of the Chief Court after reviewing a number of cases observed as follows :

"The view which has been taken in these cases consistently is that a certificate of fitness for farther appeal under Section 12 (2), Oudh Courts Act, should be granted only when the decision for which a further appeal is proposed to be preferred is (1) opposed to any general principle of law, or (2) involving a question of public interest, or (3) is contrary to any recognised precedent."

48. Similar views were expressed in *Mubarak Husain Khan v. Ghulam Abid Khan*, 1942 oudh W. n. 742, four cases reported in *Uman Shankar v. Ashraf Husain*, 1943 oudh w. N. 372, *Bhagwant Y. Mst. Ganga Dei*, 1943 oudh w. n. 393, *Brij Bhukhan v. Bhagwan Datt*, 1943 oudh W. n. 404 and *Mohammad Jafar v. Mt. Barka*, 1943 oudh W. N. 457, *Ewaz Ali v. Mt. Firdous Jehan*, 1944 oudh W. n. 228 and *Beni Madho v. JJarihar Prasad*, 1946 oudh W. N. 300.

49. With the greatest respect to the learned Judges who are of this view, I am unable to hold upon a plain reading of the sections that there is any similarity between Section 12 (2), Oudh Courts Act, and Sections 109 and 110, Civil P. C. All that the Judge is required to do under Section 12 (2), Oudh Courts Act, is to declare that the case is a fit one for appeal. it seems to me that he is not bound to state his reasons nor can the power of the Bench hearing the appeal be restricted by the single Judge referring only points of law for the decision of the Bench.

50. The principle governing appeals to the King in Council have been laid down in several cases. In *Radhakrishna Ayyar v. Swaminatha Ayyar*, 48 Ind. App. 31 (P. C.), their Lordships of the Privy Council enunciated the principle on which leave to appeal can be granted.

They said :

"that as an initial condition to appeal to His Majesty in Council, it is essential that the petitioners should satisfy the Court that the subject-matter of the suit is Rs. 10,000 and in addition that in certain cases there should be added some substantial question of law. This does not cover the whole grounds of appeal, because it is plain that- there should be certain cases in which it is impossible to define in money value the exact character of the dispute; there are questions, as for example, those relating to religious rights and ceremonies, to caste and family rights, or such matters as the reduction of the capital of companies as well as questions of wide public importance in which the subject-matter is in dispute cannot be reduced into actual terms of money."

51. In another case, *Banarsi Parshad v. Kashi Krishna*, (28 Ind. App. 11 at p. 13 (p. c.) their Lordships of the Judicial Committee have held, that when the valuation is less than Rs. 10,000 certificate under Section 109(c), Civil P. C., on the ground that the case is a fit one for appeal cannot be granted merely because the case involves a substantial point of law.

52. It must be borne in mind that in an appeal before the Judicial Committee, unless there were concurrent findings of fact, the Judicial Committee could consider questions both of fact and law, and a substantial question of law was all that was necessary to entitle an appellant to a certificate where the valuation was Rs. 10,000 or above but the decrees were concurrent. A fit case for appeal under Section 109(c), Civil P. C., was, therefore, interpreted to mean a case involving something more than a mere substantial question of law. In second appeals the High Court can only consider questions of law, and to hold that even if a case involved a substantial question of law, the appellant would not be entitled to a certificate seems to me going too far. When a certificate was once granted then? Lordships of the Judicial Committee never felt bound to consider only the points mentioned in the order granting the certificate. They used to deal with the whole case. With all respect, the practice that grew up in Oudh of restricting the arguments of the appellant on the point or points on which the certificate was granted does not appear to me justified either by the statute or the practice in the Privy Council.

53. The right of a single Judge to refer a case to a Bench of two or more Judges under Section 14, Oudh Courts Act, is unfettered. But as soon as a Judge has made up his mind and decided a case, restrictions are placed upon his discretion to have the matter adjudicated upon by a larger bench by way of appeal. His judgment that a case is a fit one for appeal is disregarded and the leave that he grants under Section 12 (2), Oudh Courts Act, can be challenged and that instead of principles that govern Letters Patent Appeals the principles that apply in appeals to a higher tribunal like the King in Council are applied. With all respect, I am unable to adhere to this view. The declaration by a Judge that a case is a fit one for appeal, in my judgment, should not be challenged as it is not challenged in Letters Patent Appeals in the Allahabad High Court.

54. In the result I am satisfied that there is no force in the preliminary objection and in agreement with my learned brother I would overrule it.

55. Regarding the merits of the appeal, I am in entire agreement with my learned brother. I also would hold that the appellant had no cause of action against Bates. His claim against Bates has been rightly dismissed. Accordingly I would dismiss appeal no. 6 of 1948.

56. As for his appeal against Dikshit, there again I am in agreement with my learned brother and consider that it should be allowed and he should be granted a decree for Rs. 1000. Learned counsel for the respondents has contended that the remarks that were made against the appellant were fully justified and has tried to show that the conduct of the appellant was certainly deserving of being characterised as "extremely wicked, ignoble and disloyal." It seems to me that there can be no justification for such characterization. He was a relation of the Maharaja and had received education abroad apparently "at the expense of the Maharaja. He was anxious for the Maharaja's good name and satisfactory administration of his estate. In his keenness to help the Maharaja he built an imaginary edifice of constitutional hierarchy. He began to think in terms of a constitutional monarchy, the cabinet and the opposition. The Maharaja was to be the constitutional monarch and the appellant wanted to be his chief executive adviser, failing which he desired to be the leader of the opposition. For this purpose he was prepared to resign--in fact actually resigned--his appointment in the Raj because he wanted to fight for the cause of the Maharaja "as an independent and faithful

citizen and relation" and "give Maharani Sirkar frank and correct advice if and when needed help for your honour and Mr. Bates to establish constitutional rule in Balrampur, enlighten the masses on their duty to your goodself and the Eaj. This was considered as an implied threat. With all respect, it seems to me that there is no question of any threat whatsoever. It appears likely that the appellant was jealous of Dikshit and did not consider his influence in the state to be for the good of the estate and possibly his own good. Dikshit, on the other hand, did not approve of him and was not unwilling to give publicity to the Maharaja's orders which were defamatory of the appellant. There was no justification for this. Thus the appeal against Dikshit must be allowed. I would grant a decree for Rs. 1000 only against Dikshit.

By the Court

57. The appeal fails and is dismissed with costs.