In Re: William Tayler

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SooperKanoon Citation : sooperkanoon.com/851053

Court : Kolkata

Decided On : Apr-24-1869

Reported in : 44Ind.Cas.930

Judge : Barnes Peacock, C.J. and ;Mitter, J.

Appellant : In Re: William Tayler

Judgement :

Barnes Peacock, C.J.

1. It is always a most unpleasant duty for a Judge to be compelled to vindicate his own honour, or the dignity of the Court over which he presides, by adopting measures which may cause pain, or wound the feelings of any man. Bat a Judge who would shrink from the discharge of what he considers to be his public duty, merely because it is to him a painful one, is not fit to be entrusted with the office which he holds. To me the duty which I am now called upon to perform is all the more painful, because the gentleman whose conduct is called into question is one with whom in times gone by I have held social and friendly intercourse. The case is one of public importance, and I am anxious that there shall be no misunderstanding of the views and opinions of the Judges and of the reasons which induced them to adopt the course which they have pursued. Above all, I am desirous that there shall be no further misrepresentations such as those with which unhappily we are called upon to deal. I have, therefore; thought it right to enter fully into the facts and law of the case, and I have reduced into' writing the

greater portion of my judgment.

2. Mr. W. Tayler was formerly a member of the Bengal Civil Service. After his retirement he was admitted as a Vakeel of the late Sudder Court; and upon the amalgamation of the late Supreme and Sadder Courts, he, in common with all the Vakeels of the late Sudder Court, was enrolled as a Vakeel of the High Court. He subsequently carried on business as a Mooktear or law agent in the' District of Patna, in which, before his retirement from the Civil Service, he had acted as Commissioner. Among other clients, he was retained by Ranee Usmedh Kower, the elder Ranee of Ticaree, for two years, upon a retaining fee of Rs. 500 a month for looking after her suits, in addition to which he was to receive a reward for every case that he might win according to its importance. Matters did not proceed amicably between Mr. Tayler and the Ranee, and the result was that two suits were commenced--one by Mr. Tayler against the Ranee to recover a sum of Rs. 29,773, consisting of Rs. 20,910 alleged to be due for principal and interest on a bond given, as Mr. Tayler alleged, for fees due to him, and Rs. 8,000 and interest alleged by Mr. Tayler to be the balance due on account of his salary or retaining fee; the other by the Ranee against Mr. Tayler to recover money alleged to have been received by him on her account.

3. In the suit brought by Mr. Tayler, the Court held that the bond had been improperly obtained, and the result was, that Mr. Tayler's suit was dismissed with costs, and Rs. 6,110 were decreed to the Ranee in her cross-suit. The case Ranee Usmut Koowar v. Taylor 2 W.R. 307 is reported in the 2nd Volume, Weekly Reporter, page 307.

4. On the 29th January 1866, the Ranee applied to the Judge of Behar for execution, and in the month of February in that year, a tenure called Dergaon, belonging to Mr. Tayler, was attached in execution. That attachment, by virtue of the provisions of Section 240, Act VIII of 1859, prevented Mr. Tayler from selling the estate so long as the attachment was in force. On the 26th February a consolidated appeal to Her Majesty in Council was filed by Mr. Tayler in the two suits, and on the 8th March he obtained a Rule calling upon the Ranee to show cause why, upon his giving security, the execution should not be stayed pending

the result of his appeal to Her Majesty in Council; and the sale under the attachment was stayed pending that Rule. The Rule was sent to the Judge of Behar for service, and he thereupon passed an order in the' execution case that the proceedings should be stayed 'for the time,' that is to say, until the Rule to show cause should be disposed of; and as there was nothing which he could do in the execution case whilst that Rule was pending, he, at the time of transmitting to the High Court his return of having served the Rule upon the Ranee, ordered that the proceedings for execution should be struck off the file of cases pending in his Court.

5. When the Rule nisi came on for hearing in the High Court, it was considered more just that, as the Ranee had obtained a decree, she should be allowed to execute it on giving security, than that she should be restrained from realising the amount upon Mr. Tayler's giving security. Accordingly, upon the 18th May, it was ordered that the decree should be executed upon the Ranee's giving sufficient security, to the satisfaction of the Judge, for the due performance of such decree as Her Majesty in Council should make.

6. That Rule was received by the Judge on the 29th May, and thereupon the execution case was again numbered and restored to the file of cases pending in his Court. The Ranee, who was a lady of large property, tendered security, which was admitted on the 7th December 1866. The delay which occurred between the transmission of the Rule to the Judge and the acceptance of the security which the Ranee offered is not accounted for on the evidence in the cause. I have frequently found in cases in which execution is stayed until the decree-holder gives security, that great delay is caused by inquiries into the sufficiency of the security, to which the debtor or his agent objects merely for the purpose of delaying the execution. Whether this was the case in the present case or not does not appear, and it is not necessary to enquire. It is not likely that the Ranee, who is a lady of large property, would have had any difficulty in finding security for so small an amount, or that Mr. Tayler would have run any risk if she had been allowed to execute her decree without security. But Mr. Tayler, having appealed to Her Majesty in Council, was entitled by law to have security, and it was granted to him.

7. It is clear that there was no improper delay on the part of the Ranee in completing her security. Delay is not generally the game of the judgment-creditor, and it is expressly found by the Judge that there was no default by the Ranee in carrying on the case.

8. On the 11th day of October, Mr. Tayler sold to Musammat Zuhoorun, the wife of Ahmedoollah, for Rs. 55,000, the estate which had been attached under the Ranee's decree. Mr. Tayler says that the purchase was made by Ahmedoollah in the name of his wife. That is very probable, and I shall treat the case as if it were so, and give Mr. Tayler the full benefit of that argument. But when Ahmedoollah is described as an old Pleader at Patna, for the purpose of raising an -inference that be must have known of the attachment at the time of the purchase, it must be borne in mind that the estate was at Gya and not at Patna, and that the sale was under an attachment from the Court at Gya, and not from the Court at Patna.

9. After the sale by Mr. Tayler, the estate was again attached by the Ranee under her decree, and the 25th February 1867 was fixed for the sale. On the 13th February Musammat Zuhoorun intervened and disputed the right of the Ranee to sell under her decree, and claimed a right to the property upon the ground that her purchase was completed before the second attachment. The case was decided against her, and an order was made that the estate should he sold. Musammat Zuhoorun thereupon satisfied the decree to prevent the sale of the estate which she had purchased and for which she had paid Mr. Tayler Rs. 55,000, and commenced a suit against him to recover Rs. 12,406, the amount which she bad been compelled to pay in satisfaction of the Ranee's decree.

10. In the written complaint in that suit, it was distinctly charged that Mr. Tayler, the defendant, bad concealed the fact of his liability to the Ranee under the decree and of the attachment of the estate in execution. The plaintiff stated that she had paid an adequate price for the estate, and that after the defendant, Mr. Tayler, had secured the entire purchase-money, and had conveyed the estate, and had put her in possession of it, the estate was publicly proclaimed for sale; that she intervened and objected to the sale, but that her claim as a purchaser was overruled on the 23rd February 1837; that the vendor, Mr. Tayler, having failed to

satisfy the decree, she was compelled to; pay the amount due under it in order to preserve the estate which she had purchased.

11. The following is a translation of the defence set up in the defendant's written statement put in on behalf of Mr. Tayler, and verified by Mr. Kelly, his agent. He says:

First.--On the principle that purchaser is bound to inform himself of all the advantageous and disadvantageous circumstances connected with the property he is going to purchase, plaintiff has no claim upon your petitioner in reference to the judgment-debt payable to Ranee Usmedh Koer, as numerous precedents of the Sudder Dewanny Adawlat and the High Court in support of this argument are extant.

Second.--If the plaintiff, without asking your petitioner and obtaining his concurrence, has, to serve her own ends, liquidated the judgment-debt due to Ranee Usmedh Koer, she cannot by any rule or regulation recover from your petitioner the money so paid.

Third.--At the time of sale, Mouzah Dargaon, in accordance with the proceedings of the Civil Court of Gya, dated 1st February 1866, A. D., and 13th February 1867, A. D., was attached and advertised for sale, and the plaintiff in full knowledge of the circumstances purchased the mouzah, and nothing was kept secret from her : on the contrary, the condition of the property was above board at the time of sale, and the plaintiff in fall knowledge of all particulars, in whatsoever way acquired, purchased the property.

Fourth.--the plaintiff has purchased a most valuable property, namely, a property of the value of upwards of Rs. 88,000, for a small price of Rs. 55,000, and since she procured a property worth Rs. 88,000 for a trifling sum of Rs. 55,000, she raised no objection in reference to the decree money of Ranee Usmedh Koer, of which, in consequence of the attachment of Dergaon, she was undoubtedly cognizant, nor did she enter into any arrangements for the deduction of the amount, nor had she any document executed for her satisfaction: on the contrary, considering the bargain for Rs. 55,000, notwithstanding the payment of the

decreed money, to be a cheap one, she forthwith upon securing the sale-deed paid up in a lump the whole of the purchase-money and took possession of the property. Under these circumstances, she has no reason whatever to complain, hence the suit brought by her is quite uncalled for. Tour petitioner prays that for the ends of justice her claim may be dismissed.

12. Here let me remark that in the defence set up on the part of Mr. Tayler, no suggestion was made that the Ranee's attachment had ceased to have effect in consequence of the execution case having been struck off the file, or that the first attachment had been superseded by the second. The point was not alluded to, or even suggested : on the contrary, it was admitted that the estate was liable to be sold under the decree. The plaintiff, when she intervened and set up her purchase as a bar to a sale under the attachment, took the objection, but it was very properly overruled by the Judge in a very clear and decisive judgment, and the plaintiff satisfied the decree to save from sale the estate which she had purchased. That judgment was put in evidence in the suit against Mr. Tayler. It might just as well be contended that all the proceedings in a suit in this Court are nullified, and that the parties must commence de novo, if a case is for any reason taken out of the peremptory board. The point is too absurd for argument.

13. The suit proceeded, and the case was tried by Baboo Girish Chunder Ghose, the Principal Sadder Ameen of Patna, who laid down two issues:

First.--Whether or not the plaintiff has the right to a refund of the amount of Rs. 11,381-13 6 paid by her in order to save the disputed property from sale, with interest claimed by her; or whether the suit is barbed by the application of the maxim of caveat emptor?

Second.--Did the plaintiff know at the time of the purchase as to the property being attached by Usmedh Kower in satisfaction of a claim against the vendor? Did the vendor inform her about the said attachment when the negotiations were completed?

14. As to the first issue, the Principal Sadder Ameen found that, according to the legal maxim caveat emptor, a purchaser ought to exercise a proper caution in

order to ascertain the amount and nature of the interest which he is about to buy; that if, without instituting proper and sufficient enquiries within his reach, he foolishly purchases any property in which the vendor's interest was not what it was represented to be, he will not be entitled to compensation for the loss he sustains for the defective-ness of title and quality of the property bought, for it is his own folly and laches not to use the means of knowledge within his reach. He then entered into the question whether the plaintiff had made due enquiries, and finding that she had not done so, he said she must be presumed to have purchased the estate with all faults, except as to the extent of the right of the vendor. He added:

It is contended that the fact of the attachment was fraudulently concealed, but there is no proof whatever to support the allegation. On the other hand, such a thing as the attachment, which was known to the world so far as the village was concerned, could not by any attempt on the part of the vendor be industriously concealed, for it was known to hundreds of people residing in the village sold. The attachment would be known in no time if a proper man had been deputed to make necessary enquiries on the spot. Therefore, the concealment, if it was one, was by no means fraudulent, and, unless fraud be proved, the contract could not be annulled.; and had there been anything like fraud on the part of the vendor, the plaintiff would undoubtedly have come to the Court for the cancellation of the contract. As there was no legal fraud on the part of the vendor the cause of the complaint falls to the ground, and hence it is to be presumed that, with the liability existing on the property, the plaintiff has purchased the same.

15. He, therefore, ordered the suit to be dismissed with costs.

16. In the latter part of his judgment the Principal Sudder Ameen alluded to a contention on the part of the plaintiff that the execution case had been struck off the file and subsequently revived, and added:

Admitting her contention to be correct I see no force in it, for the simple reason that, in that case, she was not bound to pay the amount due to the decree holder; and in case the property was sold, she, as a third party, might have sued for the cancellation of the sale on the ground that there existed no attachment before the sale.

17. It is not very clear why such a contention should have been urged on the part of the plaintiff in the suit. It was her contention when she intervened and disputed the Ranee's right to sell under the attachment and probably there may have been some confusion as to the time at which such contention was put forward on her behalf. But it is not very material.

18. The result of that decision, if upheld, would have been that Mr. Tayler would have had his judgment debt satisfied by the plaintiff, and that she would have had no redress against him.

19. Mr. Tayler in his letters has cited from 'Shakespeare,' but he has not made any quotation from a 'New way to pay old.'

20. The plaintiff appealed to the High Court from the judgment of the Principal Sadder Ameen; and amongst other grounds she urged to the effect--first, that the defendant could not take advantage of his own wrong; second, that the doctrine of caveat emptor did not apply to a case like this, in which fraud was alleged as the cause of action; seventh, that the very, circumstance of the defendant's concealing the fact of attachment on decree was sufficient to show a fraudulent concealment, as Mr. Tayler was well aware of finch attachment, and sufficient to fix him with liability, unless he proves that the plaintiff purchased with knowledge and paid inadequate value, and eighth, that the case was not one of voluntary payment, for the recovery of the money was sought, not from the judgment-debtor, but from the vendor.

21. The appeal was heard in the First Bench before the Chief Justice and Mr. Justice Dwarkanath Mitter. The case was very fully and ably argued by Mr. Paul as Counsel on behalf of Mr. Tayler; the evidence on both sides was fully considered, and every attention and consideration was given to the case which it was in the power of the Court to bestow. It was very properly admitted on behalf of Mr. Tayler, for it could not possibly be denied, that the payment was not voluntary, and the Chief Justice was so fully satisfied of the plaintiff's right to recover upon the ground that she had been compelled to pay Mr. Tayler's debt in order to protect from sale, under the Ranee's decree, the estate which she had purchased from Mr. Tayler, that he did not consider it necessary to express any decided opinion

upon the other points of the case, viz., whether there was concealment or no concealment, fraud or no fraud. He says:

It appears to me that this is a very clear case. The plaintiff seeks to recover the sum of Rs. 12,406-7-0, which she paid on account of Mr. William Tayler in discharge of a decree which Ranee Usmedh Koer had recovered against him. It is almost unnecessary to consider whether the plaintiff was a volunteer in paying this money, or whether she paid it under compulsion, because it has been admitted by Mr. Paul, the learned Counsel of Mr. Tayler, that the payment was not a voluntary one.

It appears that the plaintiff purchased an estate from Mr. W. Tayler for the sum of Rs. 55,000; that before the sale to the plaintiff that estate had been attached in execution of the decree; and that the plaintiff paid the amount of the decree and interest in order to prevent the property which she had purchased from being sold in execution. It is said by Mr. Tayler that although the property was sold for Rs. 55,000 it was worth a great deal more; and in proof of that assertion he has called a witness, who, if he is to be believed, has shown that Mr. Tayler's estimate of the value was very much under the mark, inasmuch as the estate was worth two lakhs. I do not believe the evidence of that witness. It is improbable that he, acting as the agent of Mr. Tayler, would have sold for Rs. 55,000 a property which was worth two lakhs; but whether it was worth Rs. 55,000, Rs. 88,000, or two lakhs, is wholly immaterial for the decision of this case.

By Section 235 of the Code of Civil Procedure, when property is to be attached in execution of a decree, the attachment is to be made by a written order prohibiting the defendant from alienating the property by sale, gift, or in any other way, and all persons from receiving the same by purchase, gift, or otherwise; and by Section 240 of the same Act, it is enacted that when any attachment shall have been made by actual seizure, any private alienation of the property attached, whether by sale, gift, or otherwise, shall be null and void.

Mr. Tayler, therefore, must, before he sold the property, have been served with an order from the Court prohibiting him from alienating it. He must have been fully aware at the time of the sale that any sale by him would be liable to be defeated

by the decree-holder.

Several witnesses have been called on the part of the defendant, and have proved that the plaintiff at the time that she purchased the estate was aware of the attachment. Enayut Hossein swore that he informed the husband of the plaintiff of the attachment at the time of the execution of the deed of sale. Shaik Eusoof Hossein swore that Enaynt Hossein told the husband of the plaintiff in his presence in the house of Wilayat Ali Khan, where the consideration money was paid; and yet Enayut Hossein, who was acting for Mr. Tayler in selling the property, upon cross-examination, stated that he did not remember at what place he told Ahmedoollah about the lien. Ahmedoollah, on the other hand, swears that he never knew of the attachment and if it were necessary to decide upon the conflicting testimony of the witnesses in the cause, I should have little hesitation in deciding that the plaintiff, at the time of the payment of the purchase-money, was not aware of the attachment. It is hardly likely that, if she had been aware of the attachment, something would not have been Said upon the subject. Enayut Hossein, who, according to his own evidence, took the precaution of telling Ahmedoollah about the attachment, swears that he was acting for both parties; and yet, according to his evidence, nothing appears to have been said at the time of the sale as to whether the plaintiff, in consequence of her being allowed to purchase the estate for what Mr. Tayler calls the trifling sum of Rs. 55,000, was to take upon herself to discharge the debt which Mr. Tayler owed the Ranee. Even supposing the plaintiff made a good bargain in buying this estate for Rs. 55,000, there was no obligation on her part, because she got the estate cheap, to pay Mr. Tayler's debt.

If it had been intended that she was not only to pay the Rs. 55,000 to Mr. Tayler, but was also to pay off the debt which Mr. Tayler owed to the Ranee, the purchase-money would have been stated, as suggested by Mr. Twidale, to be the Rs. 55,000 and the amount of the debt added; and part of the purchase-money would have been paid to the decree-holder in satisfaction of her decree. It is clearly beyond all doubt that the plaintiff has paid Mr. Tayler's debt; that she was under no legal obligation to pay that debt as between her and Mr. Tayler; that she did not pay the debt voluntarily, but under compulsion, to save the estate which

she had purchased, and for which she had paid, from sale in execution of the decree; and under the ordinary rules of law, of justice, and of equity, Mr. Tayler, who has had the benefit of having his debt discharged by the plaintiff, would be bound to repay the amount. Even if the plaintiff knew that Mr. Tayler owed the money, and that the estate had been attached, that fact would make no difference, unless she came under an obligation to Mr. Tayler to pay off that debt in consideration of his allowing her to have the estate for Rs. 55,000; yet Mr. Tayler contends that, because she got the estate cheap, she was bound to satisfy the decree against him. I see no reason to believe that Mr. Tayler would have sold the estate to the plaintiff or to any one else for Rs. 55,000 if he could have got two lakhs, or even Rs. 88,000 from any other person. This lady was no more bound, without a contract, to pay Mr. Tayler's debt, because she got the estate for Rs. 55,000, than she was to repay Mr. Tayler the difference between Rs. 55,000 and Rs. 88,000, the amount at which he now values it, or the two lakhs at which it was valued by his agent.

In the case of Exall v. Partridge (1790) 8 T.R. 808 : 101 E.R. 1405 which was decided on the principles of justice, applicable as much in the Mofussil as they are in England, it was held that where the goods of a stranger were on the premises of another person and were distrained by the landlord for rent in arrear, and the stranger was obliged to pay the rent in order to redeem his goods, he might recover the money paid from those who owed the rent.

It was said by one of the Judges that 'the plaintiff could not relieve himself from the distress without paying the rent. It was not, therefore, a voluntary, but a compulsory payment. Under these circumstances, the law implies a promise by the three defendants to repay the plaintiff.'

Another of the Judges said, 'one of the propositions stated by the plaintiff's Counsel certainly cannot be supported, that whoever is benefited by a payment made by another is liable to an action of assumpsit by that other, for one person cannot, by a voluntary payment, cause an assumpsit against another; but here was a distress for rent due from the three defendants, the notice of distress expressed the rent to be due from them all, the money was 'paid by the plaintiff in

satisfaction of a demand on all, and it was paid by compulsion. Therefore, I am of opinion that this action may be maintained against all the three defendants.'

Here, then, was a debt of Mr. Tayler's paid under compulsion by a person who was under no obligation to pay it, and the plaintiff is entitled to recover the amount. It is unnecessary, therefore, to consider or to decide whether there was any fraudulent concealment on the part of Mr. Tayler of the fact that the estate had been attached, or to enter into the question whether the recital in the deed amounted to a covenant that Mr. Tayler had power to sell.

The legal maxim caveat emptor has been misapplied. It is wholly inapplicable, and has no bearing whatever upon the present case.

The Principal Sudder Ameen says that 'the concealment, if it was one, was by no means fraudulent,' but I feel at a loss to understand what notions the Principal Sudder Ameen entertains of fraud, when he holds that if a gentleman sells an estate which he knows has been attached under a decree against him, and conceals the fact from the purchaser, and receives the purchase-money, the concealment is one which does not fall within the class of fraudulent.

Cases have been cited to show that if an execution case is struck off the file, the attachment which has been made under the execution necessarily falls to the ground.

Section 245 of the Code of Civil Procedure enacts, that 'if the amount decreed with costs, and all charges and expenses which may be incurred by the attachment, be paid into Court, or if satisfaction of the decree be otherwise made, an order shall be issued for the withdrawal of the attachment; and if the defendant shall desire it, and shall deposit in Court a sum sufficient to cover the expense, the order shall, be proclaimed or intimated in the same manner as hereinbefore prescribed for the proclamation or intimation of the attachment, and such steps shall be taken as may be necessary for staying further proceedings in execution of the decree.'

I find no authority in Act VIII of 1859 for saying that an attachment is at an end if the execution case is struck off the file; and, therefore, if it became necessary to

decide upon that point, I should refer the case to a Full Bench.

No one, I presume, will contend that if a Judge finds that he has struck off an execution case improperly, he cannot restore it to the file, but that the case must proceed de novo. In this case, according to the statement, which must be taken all together, 'the execution decree case had been for a time struck off the register when the sale took place, and subsequently the case was revived, when a sale-proclamation issued, on which the plaintiff preferred a claim, and on the claim being rejected, she paid the amount for which the property had been attached.'

There has been no case cited which goes to the extent of holding that if an execution case is struck off the file, and a proclamation issued upon the attachment which had issued before the case was struck off, the sale would be subject to all incumbrances created by the debtor between the time the attachment was made and the time the property was sold, on the ground that the effect of the attachment was destroyed for ever by striking the case off the file. Though not expressly in point, the case of Rajah Mukesh Narain Singh v. Kishanund Misr (1862) 1 Suth. P.C.J. 488 : 9 M.I.A. 324 : 1 Sar. P.C.J. 862 : 19 E.R. 764 has a strong bearing upon the point.

For the above reasons, it appears to me that Mr. Tayler is bound to refund the money which the plaintiff was compelled to pay, and did pay, in' order to save the estate, which she purchased and paid for from being sold under the execution.

22. Mr. Justice Dwarkanath Mitter said (and this is the principal grievance of which Mr. Tayler complains in his letters to the Editor of the Englishman):

I entirely concur. I feel no hesitation in holding that the plaintiff is entitled to recover, both upon the ground that she has paid a debt due from Mr. Tayler to Ranee Usmedh Koer when she was under no obligation to pay it, as also upon the ground that a fraud has been perpetrated against her by Mr. Tayler in concealing from her the fact that the estate sold by him to her was under attachment in execution of a decree of Court. I should have been extremely sorry if the state of the law were otherwise.

23. The finding that there was a fraudulent concealment was upon a point raised in the suit and in the grounds of appeal, and one upon which evidence was gone into on both sides.

24. For pronouncing this judgment upon a point in issue, the learned Judge, as will be presently seen, is charged with 'wanton insult and unfounded aspersion.' He is charged with having done that for which a District Judge would probably have been suspended. But the charge was made in letters in which the real facts under which the judgment was pronounced were artfully, and I may say wilfully, concealed by Mr. Tayler; and a new state of facts, which was untrue, and which, if true, had never been set up as a defence in the suit, or ever brought to the notice of the learned Judge, was substituted. Mr. Tayler must have known, and I will prove out of his own mouth that he did know, that upon the facts, as they appeared at the time when Mr. Justice Dwarkanath Mitter pronounced his judgment, there was not the slightest ground for complaint. It was not because the Chief Justice felt so confident of the plaintiff's right to succeed upon another point, and abstained from finding upon the issue of fraud, that Mr. Justice Dwarkanath Mitter was not at liberty to express his opinion upon that point, which was directly in issue, without subjecting himself to such charges as those which Mr. Tayler has preferred against him in his letters. As well might a juryman be charged with wanton insult and unfounded aspersion for pronouncing, upon evidence before him, a verdict of guilty against a man tried upon a charge of theft or embezzlement. The case was one appealable to Her Majesty in Council, and even if it had not been so, it would have made no difference.

25. Judges, although they may agree as to the judgment which ought to be given in a particular case, do not always agree in the reasons for arriving at that conclusion, or one Judge may have an additional reason, upon which the other has not expressed his opinion. There is no reason why a native gentleman, who by his abilities has raised himself to the Bench of the High Court, is to be maligned and slandered because he has the independence to express an opinion of his own, or even to differ from the Chief Justice. What would become of the independence of Judges if this were to be allowed?

26. Mr. Tayler says that this dishonoring and unmeasured imputation, judicially cast upon him by Mr. Justice Dwarkanath Mitter, has been recorded by him without one tittle of evidence to support it; that it is wholly untrue and manifestly absurd. But, if he was dissatisfied with the finding, he could have appealed to Her Majesty in Council, for the case was an appealable one, and it is not too late to appeal even now. But Mr. Tayler knew full well that, if be appealed to Her Majesty in Council, he must have appealed upon the case as it stood when the Judge pronounced his judgment. He, therefore, preferred to appeal to the Editor of the Englishman, and through him to the public, and to rest that appeal upon a false state of facts and a dishonest concealment of the real one.

27. No one reading the letter of the 7th of April could have imagined that Mr. Justice Dwarkanath Mitter's judgment was a finding upon an issue in the case founded upon what he honestly believed to be the weight of evidence given on both sides. If Mr. Tayler had honestly intended to criticise the judgment, with reference to the evidence given in the cause, he might have done so without objection: he might have set the evidence and commented upon it, so that those who read the criticism might have been able to form their own judgment as to his conclusions.

28. I now pass from the charge against Mr. Justice Dwarkanath Mitter in reference to his original judgment to the charge brought against him in respect of his refusing to retract upon review.

29. Here let me again point out that throughout the whole of Mr. Tayler's so called criticism he treats Mr. Justice Dwarkanath Mitter's finding upon a material issue in the cause as a gratuitous uncalled-for aspersion, and as a wanton insult which he could retract at pleasure. But this is not so. Mr. Justice Dwarkanath Mitter had expressed his judgment upon a material point in the case, and he could not, without granting a review, retract it. The finding had been come to and the judgment had been recorded. The case was one which might have been appealed by Mr. Tayler to Her Majesty in Council, and the plaintiff would have been entitled to have the finding returned with the record.

30. The case set up by Mr. Tayler in review was, like the case set up in his letters, entirely different from that which had been set up or even suggested on his behalf in the lower Court.

31. In the lower Court it was admitted in the 3rd paragraph of the written statement that at the time of sale the estate was attached under proceedings of the Civil Court of the 1st February 1866 (now said Mr. Tayler to have been at an end by the striking of the case off the Judge's 61e) and of the 13th February 1867 (the attachment stated in Mr. Tayler's letter of the 13th April 1869 to have been discovered by him only within the last two days), and the contention then was that plaintiff purchased with full knowledge of the first attachment; that she bought for Rs. 55,000 an estate which was worth Rs. 88,000; that she paid off the decree against Mr. Tayler to serve her own ends, and that the maxim caveat emptor applied.

32. In the petition for review, the case set up was, that in Mr. Tayler's belief the attachment had been ipso facto withdrawn before the sale, by reason of the case in execution having been struck off the file in consequence of the Ranee's having neglected to furnish security in pursuance of an order of the High Court, and that Ahmedoollah was aware of the fact when the sale was completed.

33. Mr. Tayler said:

Your petitioner, having just returned to India, has read, he need not say, with pain and mortification the decision of the High Court in the case of Musammat Zuhoorun passed on the 19th November 1868.

Your petitioner cannot reasonably demur to the decision, based as it is on the defence set up by his native Mookhtear, and supported by the evidence which he has volunteered in the case.

All your petitioner now desires to do is to inform the Court that the statement put in and the evidence given by Enayut Hossein and his creatures are totally false, male and given without the approval, concurrence, or knowledge of your petitioner, and in direct opposition to this instructions given by your petitioner to Enayut Hossein

before his departure from India.

When the High Court is informed that Enayut Husein is now in the criminal jail, convicted of fraud and embezzlement against your petitioner, and that your petitioner himself has been compelled to come out to India at great loss and inconvenience principally for the purpose of counteracting his nefarious proceedings, it will without difficulty appreciate your petitioner's position.

34. He then proceeded to state what he called the facts of the case, to the effect that the Ranee attached the estate in February 1866, under the decree; that being about to appeal to Her Majesty in Council, he obtained an order from the High Court that she should be required to give security before execution; that the Ranee not having complied with the order, the decree case was struck off the file; that whatever might have been the strict legal consequence of that order, he confidently believed that it necessarily involved the withdrawal, ipso facto, of the attachment; that he truly and conscientiously believed that no obstacle existed to the absolute sale of the property; that he gave instructions to his agent to sell it; that negotiations for sale were carried on for several months, and were finally concluded at nearly the end of the year, when the sale was completed, the deed registered, and possession given, the Ranee having during the whole of that period failed to comply with the Court's order, and the attachment being still, as generally believed, removed; that he heard nothing mere until a few days before he left India, when Enayut Hossein informed him that the estate had been brought to sale, and that Ahmedoollah had paid the amount of the decree; that in the meantime a correspondence had been going on between Enayut Hossein and the Ranee's Dewan, and that the latter had proposed a compromise of the decree on a cash payment of Rs. 6,000 or Rs. 7,000; that when Mr. Tayler heard that Ahmedoollah had, without the slightest intimation or reference to him, paid the full amount, and thus, for his, Ahmedoollah's own, benefit deprived Mr. Tayler of the advantage of the reasonable compromise just About to be concluded, he instructed Enayut Hossein to represent the circumstances to Ahmadoollah and effect an amicable compromise with him, if possible, for the amount which, but for the sale under the decree would have been effected with the Ranee; that he never disputed nor wished to dispute his liability for the payment made.

35. He then went on to say that he left a few days afterwards for England; that when some months afterwards he heard that an action has been brought against him, not then having reason to distrust Enayut Hossein, he concluded that, if he defended the suit at all, it would only be to the extent of the equitable plea above mentioned according to the instructions received; that it was impossible to divine for what purpose Enayut Hossein put in the false and dishonest statement on which the High Court had commented; but he positively asserted that both himself and, to the best of his belief, Ahmedoollah and the numerous other persons cognizant of the lengthened negotiations were all under the conviction, that the attachment had ceased, and everything was concluded with the greatest openness and publicity; that Ahmedoollah, the purchaser in his wife's name, to the best of his (belief, had the same conviction, being, as he believed, perfectly aware of all that had passed; that Enayut Hossein's statement as to the attachment, the value of the estate, and the information said to have been given to the purchaser, as well as his plea as to the non-liability of Mr. Tayler, were totally and wickedly untrue.

36. He prayed that the Court would accept his statement, which he was prepared, if required, to substantiate on oath, and relieve him from the harsh and dishonoring animadversions which it had recorded--a modest request certainly, when in the petition he accused Enayat Hossein of perjury and with having misrepresented to Mr. Kelly, Mr. Tayler's own agent, the effect of the written statement which Mr. Kelly had verified upon oath; and when the petition stated, in direct contradiction of Ahmedoollah's evidence given in the cause upon oath, that he, Ahmedoollah, was to the best of Mr. Tayler's belief fully cognizant of all that had passed, and was under the same conviction as he that the attachment had ceased.

37. In his petition and in his affidavit he declared that it was not his intention to dispute his liability for the amount paid. He stated that he directed Enayut Hossein to endeavour to compromise with the plaintiff if he could. He does not state what instructions he left with Enayat Hossein as to the defence to be set up if the plaintiff should refuse to compromise, but merely that, when he heard that the action had been brought, he considered that if Enayut Hossein defended at all it would only be to the extent of the equitable plea above mentioned according to the

instructions received. This was explained by an additional affidavit, in which he swore that he believed that the only plea which he would ever have allowed to be advanced on his behalf was, that a compromise had been agreed to by the Ranee's Dewan for a sum (as far as he could remember) of Rs. 7,000, and that the plaintiff, by paying the full amount of the decree, without notice, had deprived him of the benefit of the compromise. He also annexed extracts from a correspondence between himself and Mr. Kelly.

38. In one of the letters to Mr. Kelly he appears to have said:

I certainly would not pay Amedoollah more than Rs. 7,000, which is the sum I should in all probability have been able to compromise with the Ranee for. He had no right to pay the money on his own authority and without my concurrence, and thus entail on me a liability to the whole without compromise and without the time which the Court would undoubtedly have given me. So if he does not accept this, let him bring his action. But in this matter also, you had better exercise some discretion in consultation with Enayut Hossein and Wilayut Ali.

39. That letter is dated 3rd May 1867. The plaintiff's suit was not brought before the 3rd December following. Though Mr. Kelly and Mr. Tayler both made affidavits, not one syllable was stated by either of them as to any offer of compromise having been made to the plaintiff. All Mr. Kelly swore upon that subject was, that if there had been a compromise he had funds in hand sufficient to pay Rs. 7,000 or 8,000 to the purchaser.

40. That no compromise had ever been effected with the Ranee is clear from her proceeding with the execution without any attempt on the part of Mr. Tayler to prevent it. It is clear that no compromise was made with the plaintiff, from the fact that her suit was afterwards brought, and no such compromise was set up as a defence.

41. The only defence that Mr. Tayler could have set up under these circumstances was, that the attachment was not in force when the sale took place. If he had made that defence, he might have dictated his own terms, for in that case the plaintiff had paid in her own wrong; and no doubt Mr. Tayler would have set up

that defence and dictated his own terms, if he had believed that the attachment was not in existence when the sale took place, or that it was superseded by the second attachment; but no such defence was suggested by him either to Enayut Hossein or to Mr. Kelly in any one of his letters. It is also to be remarked that nothing is said either in the petition or in the affidavits as to whether any and what consultation ever took place between Mr. Kelly, Enayut Hossein, and Wilayut Ali, as recommended in Mr. Tayler's letter of the 3rd May 1867.

42. Mr. Tayler was heard in support of his petition for review, and on the 13th of March 1869 the following judgments were delivered. The Chief Justice said:

It appears to me that there is no ground for reviewing the judgment. I have read very carefully the judgment which I delivered in this case, and I see nothing in it which I can retract. I did remark upon the judgment of the Subordinate Judge, but I abstained from expressing any opinion as to whether there was any fraudulent concealment on the part of Mr. Tayler.

43. Mr. Justice Dwarkanath Mitter said:

I am of opinion that this application ought to be refused.

It is not contended that the remarks made by me in the judgment, which is now sought to be reviewed, were not warranted by the evidence then before me, nor is it contended that the decree which followed upon that judgment is in any respect contrary to law or justice. But it is urged that the written statement put in on behalf of the petitioner, and the evidence adduced in support of it, were all concocted by one Enayut Hossein, the native agent of the petitioner, contrary to the instructions expressly given to him by the petitioner, and I have been accordingly asked to withdraw certain remarks which I had made with reference to the conduct of the petitioner, as disclosed by the evidence on the record which I had before me when I beard the appeal.

I do not think that an application of this sort, which does not ask for any substantial interference either with the judgment or the decree which followed upon it, can be legitimately treated as an application for review, and on this ground I decline to

entertain it.

I wish to add, however, that I should not. be justified in withdrawing the remarks in question upon an ex parte proceeding of this kind. Enayut Hossein is not before the Court, and so far as the plaintiff is concerned, she is in no way interested in opposing this application, inasmuch as the petitioner is not seeking for any interference with the decree which has been passed in her favour.

I express no opinion whatever as to the correctness or otherwise of the statements contained in the affidavit filed by the petitioner. I can only say that if the charges brought against Enayut Hossein are true, the petitioner ought to prosecute him upon those charges; and I have no doubt that such a prosecution, when brought to a successful termination, would be a sufficient vindication of his character. As matters stand at present, I cannot, upon an ex parte application like this, hold Enayut Hossein guilty of the serious offence with which he has been charged by the petitioner, and this I must do before I can withdraw the remarks in question.

I wish further to add that I am by no means satisfied with the explanation given by Mr. Kelly with reference to the verification of the written statement. Mr. Kelly says in his affidavit, 'I received from Mr. Tayler a letter, dated from London the 17th April 1867, and another dated from the said place the 3rd May of the said year, and in these two letters were contained instructions for the settlement of the claims of Musammat Zahuroonnissa, and the purport and substance of these instructions were communicated by me to the said Enayut Hossein. When the suit of Musammat Zuhuroonnissa was brought, the written statement on the part of Mr. William Tayler was prepared by the said Enayut Hossein, and was represented to me as being in conformity with the purport and substance of the instructions of Mr. William Tayler in the said matter, and upon this assurance I verified the written statement.'

In the first place I remark that the affidavit does not disclose the precise instructions which Mr. Kelly gave to Enayut Hossein in case he, Enayut Hossein, should fail to bring about an amicable settlement, nor does it appear that the letters referred to are very clear on the point. But be that as it may, it appears to me that Mr. Kally was in no way justified in verifying the written statement in

question merely upon a general assurance from Enayut Hossein that it was prepared 'in conformity with the purport and substance of the instructions of Mr. Tayler.' When a gentleman puts in a verified written statement, it is his bounden duty to satisfy himself, by every possible means in his power, that every allegation which is contained in that written statement is in strict conformity with truth; and it is no excuse whatever for him to say that he is ignorant of the language in which the written statement was drawn up, or that he was generally assured by some one else that everything stated therein was in conformity with his instructions. It may be that Mr. Kelly was misled by Enayut Hossein; but without expressing any opinion upon this point, one way or the other, I do not feel the slightest hesitation in saying that, upon his own showing, the explanation offered by Mr. Kelly is altogether unsatisfactory.

I reject this application.

44. Before those judgments were pronounced, the Chief Justice and Mr. Justice Dwarkanath Mitter consulted together upon the subject of Mr. Taylor's application for review. I pointed out to Mr. Justice Dwarkanath Mitter that I did not see how he could revoke his finding upon the issue of fraudulent concealment without virtually expressing his opinion, behind the back of Enayut Hossein, of the charges brought against him by Mr. Tayler in his petition and affidavits. I fully concurred with my honourable colleague in the course which he proposed to adopt, and which he did adopt, in the judgment which I have read.

45. Without setting out the judgment, or even stating the nature of his reasons, Mr. Justice Dwakanath Mitter is charged with having, on the narrowest grounds of technically, refused to retract an unfounded and unjustifiable accusation and a slander re corded against an absent suitor without one tittle of evidence to support it; and this though the accusation had been clearly disproved. If this is fair criticism, I confess I do not understand what fair criticism is.

46. Mr. Tayler, in his affidavit put in on Tuesday last, swears that the several letters written by him were written for the sole and single purpose of removing the stigma which attached to his name in consequence of the remark recorded by Mr. Justice Dwarkanath Mitter, and to prove, by a searching criticism before the public

and his friends, that the facts of the case did not warrant such inference. If that is true, Mr. Tayler has far exceeded the means necessary for the end.

47. To show the animus with which the letters were written, I proceed to read them.

48. They are all artistically framed, and, like the chapters in some novels, each is headed with a quotation to give some short general idea of what is coming. Some of the insinuations are artfully penned, but there can be no doubt that they are defamatory, It is plain who are the persons alluded to, and what is the meaning; and to quote the words of Lord Hardwicke in a similar case [The St. James's Evening Post case (1742) 2 Atk. 469 at p. 470 : 26 E.R. 683] of contempt:

As a Jury, if this fact was before them, could make no doubt, so, as I am a Judge of facts, as well as law, I can make none.

49. The first letter, that of the 7th April, begins with a quotation from Shakespeare:

My reputation, Iago, my reputation.

Othello.

To the Editor of the Englishman.

Sir--I was in hopes that, long ere this, I might have sent you for publication the proceedings of the High Court in the matter of my application for a review of judgment in the case in which Mr. Justice Dwarkanath Mitter did me the honour to record that I had 'perpetrated a fraud; ' but as I have not yet been able to obtain authenticated copies. I do not wish to delay any longer the remarks which I consider myself called upon to make injustice to myself in regard to this insulting, and as I shall show, utterly unjustifiable, charge.

Condemnation or censure passed by a Court of Justice on a suitor (if without sufficient ground or reason) is the most mischievous, the most intolerable of slanders. The Judge on the Bench, like the Parson in the Pulpit, has it all his own way for a time; but the Preacher attacks man in general, the Judge deals with the individual. General condemnation hurts no one. Individual censure may be ruin to

the object of it.

I now purpose to show, and that by clear and unanswerable evidence, that this dishonoring and unmeasured imputation judicially cast upon me by Mr. Justice Dwarkanath Mitter has been recorded by him without one tittle of evidence to support it; that it is wholly untrue and manifedly absurd; and I beg you to observe that the learned Judge who placed it on record has not condescended to give one single reason, ground, on argument in support of his denunciation.

If a District Judge, had so acted, he would in all probability have been suspended, or, at all events, subjected to some such ordeal as Mr. Beaufort underwent not long ago ! Whether elevation to the Bench of the High Court carries total exemption from responsibility with it remains to be seen.

50. This is a distinct charge, that the learned Judge had been guilty of such conduct that if he had been a District Judge he would in all probability have been suspended; but where is the promised clear and unanswerable evidence to support it? It not only asserts that the Judge's conduct was such as to justify suspension, but Mr. Tayler declared that it remains to be seen whether, in consequence) of his high position, he will be exempt from responsibility by Government. There was a charge sufficiently grave to justify the Secretary of State in calling for explanation. Was the learned Judge to wait, or immediately to vindicate his honour and his character?

51. The letter proceeds:

The facts of the case, as far at least as they regard this judicial insult, lie in a nutshell.

52. Mr. Tayler then proceeds to detail the facts, not as they appeared on the record, on which alone the Judge had to decide, but upon Mr. Tayler's statement. He says:

In October 1866, I sold an estate then in my possession in the Gya District for Rs. 55,000 to one Ahmedoollan, an old Patna Vakeel, who purchased it in the name of his wife. Nine months after the sale, this estate had been attached by the delicious

old maid of Ticaree under the decree which, to her utter amazement and bewilderment, she obtained from the Hon'ble Justices Loch and Norman for Rs. 12,000--a decree which robbed me of the hard earnings of a year.

53. I shall have occasion in another place to refer to this description of the Ranee. I merely ask here, was it necessary for the vindication of Mr. Tayler's character in this matter under consideration? But what was the meaning of the assertion that she obtained that judgment to her utter amazement and bewilderment? What was the meaning of describing the decree as one which had robbed him of the hard earnings of a year? Could any other meaning attach to those words than that the decree was an unjust one? Was it necessary for the vindication of Mr. Tayler's character, with reference to the question whether he had fraudulently concealed the attachment from a purchaser of the estate, to enter into the merits of the decree under which that estate was attachment? I should have thought that Mr. Tayler would have been glad to allow all questions as to that decree to be buried in colivion; for, notwithstanding the Judges and on review, and upon reading a deposition of Mr. Tayler which had been taken irregularly and was not before the Court on the first bearing of the appeal, withdraw certain remarks which reflected seriously upon Mr. Tayler's character, still the ugly fact remained that Mr. Tayler endeavoured in a certain suit against the Ranee, his former client, to enforce payment of a bond which he had obtained improperly from her, and by the doctrine or estoppel to bind her to certain untrue statements which had been introduced into the bond.

54. Mr. Justice Norman in that case made the following remarks:

Mr. Tayler, however, raises the issue that his client is estopped by the admission in the bond. There cannot be a greater mistake. Mr. Tayler stood towards the Ranee in a fiduciary position as her confidential legal adviser.' And again--'We think Mr. Tayler is not entitled to recover on the bond, and it must be set aside as improperly obtained from his client.

55. The attempt made by Mr. Tayler in that suit to pervert justice by a misapplication of the doctrine of estoppel was not unlike the attempt which was made by him in the suit brought by Musammat Zuhoorun to pervert justice by a

misapplication of the maxim caveat emptor. And here I may ask why, if Mr. Tayler believed that the decree passed by Justices Loch and Norman was unjust or erroneous, did he not proceed with his appeal which he preferred to the Privy Council, and which he withdrew before the date of this letter?

56. The letter continues:

After this attachment, she was required by the High Court to give security before her decree was executed, and on failing to comply with the order, the case of execution of decree was struck off without reservation. Some time after this, I gave directions for the sale of the estate. The negotiations were conducted with the utmost publicity by my agent while I was at Simla. They were carried on for months together, and finally completed nine months after the case had been struck off.

57. This allegation not only contains a false fact, but suppresses the truth. It is false as regards the statement that the attachment was struck off for default of the Ranee. It is a suppression of the truth, inasmuch as the facts stated were not those upon which the Judge decided, and the validity of the attachment, or of the Ranee's right to sell the estate under it, had never been disputed or set up as a defence by Mr. Tayler.

58. It is not necessary to decide that Mr. Tayler, when he wrote in this letter that the decree had been struck off for default of the Ranee, stated what he knew to be false, but it is a very remarkable fact that it was made after the Judge in his judgment in the intervention case had declared that the case was not struck off for default of the Ranee, and that the precedent which had been cited by the Pleader to show that the attachment was invalidated by the striking the case off the file was applicable only to a case in which the decree is struck off owing to the negligence of the decree-holder. That judgment having been filed as part of the evidence in the suit against Mr. Tayler, that gentleman in his letter brings his case within the rule by the false statement that the decree was struck off in consequence of the Ranee's having failed to comply with the order that she might give security.

59. It will make the case clearer if I now read the Judge's judgment in the intervention suit, which was put in as evidence in the suit brought by the purchaser against Mr. Tayler, and compare it with these assertions of Mr. Tayler:

To-day this case came on for hearing in the presence of the Pleaders for both parties, and the papers of the case have been taken into consideration. The particulars of this case are as follows:

On the 27th January, 1866, Ranee Usmedh Koer filed a petition for execution of decree, with a view to realize the costs and interest payable to her under the decree of the High Court, dated 29th April 1865, by Mr. William Tayler. At that time she also submitted a schedule of the properties which she intended to attach, that is to say, a schedule of sixteen annas of mokuraree right in Mouzah Dargaon in Pergunnah Sumai, On the 1st February 1866, an order for attachment was passed by this Court, and also the usual processes were issued and the estate was attached on the 9th March 1866. An order was sent by the Court to the effect that the decree-holder should show cause within two weeks, why the execution of decree should not be postponed if the judgment-debtor would find sufficient security until the appeal preferred to the Privy Council shall have been decided. On the receipt of the order afore alluded to, this Court passed in order, to the effect that the execution proceedings should be postponed for the time. Also on the 13th March at the time of the transmission of the return to the superior Court, this Court made this order, that the proceedings for execution of decree should be struck off from the files of pending cases. On the 29th May I860, an order was received from the High Court, purporting that in the event of tender of sufficient security, the decree in favour of the decree-holder might be executed. In obedience thereto, the case for execution of decree was again numbered on the file. On the 7th December 1865, the security tendered by the decree-holder was admitted, and the property having been again attached, the 2nd February 1867 was fixed for another sale. On the 13th February 1867 Musammat Zahoorun, the objector, filed a petition praying that the property attached might be exempted from sale, because she having purchased the property in dispute under a deed of sale of 11th October 18 56 had been in possession, and the purchase in question took place before the second attachment.

In this case the point for trial is whether the order of this Court in the matter of striking off the case for execution of decree for the time being from the file of pending oases can be prejudicial to the previous attachment, and render the same null and void.

The opinion of the Court is, that an order, like the one passed by this Court, cannot be prejudicial to the interest of the decree holder under the circumstances of the case, and with reference to the fact that the proceedings in execution of decree were thrown oat for a short time and no default was committed by the decree-holder in carrying on the case. Hence, as the decree holder has furnished sufficient security, and the case for execution of decree has been numbered on the file by order of the Court, the parties to this suit have been placed in the same position in which they were at the time of the striking off of the case for a short time. Hence the Court finds that the first attachment has been in existence and in status quo. The precedent relied on by the Pleader for the objector, of 3rd May 1855, page 224, can be applicable to a case in which the execution of decree is specially struck off the file, owing to the negligence and default of the decree-holder. Hence, believing that the first attachment did not become null and void, and as the first attachment had taken place prior to the purchase made by the objector, the Court does hereby order that the objection be rejected, and the properly attached be sold by auction for the realization of the money decreed.

60. The letter goes on:

Now I ask you, and through you the public, the whole service to which I had the honour to belong, and with which I am still connected by so many ties, and finally I ask the Hon'ble the Chief Justice and the Judges of the High Court to say what was the fraud which I perpetrated in thus disposing of my property?

61. I will answer the question. The fraud consisted, not in selling the estate, but in gelling it without informing the purchaser of the attachment, receiving the whole purchase-money from her, leaving her subject to have her estate sold under that attachment, and when she had been obliged to staisfy the decree in order to save her estate from sale, refusing to pay her the money which she had so paid, and of which Mr. Tayler got the benefit in satisfaction of the decree, and setting up the

doctrine of caveat emptor and other similar sham defences. Mr. Tayler was not so innocent as not to know that the fraud charged was not the simple fact of his selling his property.

62. The letter further says:

Is it not, and has it not for years passed been the unvarying custom throughout the District Courts to consider an attachment dead when an execution case has been struck off the file? Will Mr. Justice Dwarkanath Mitter dispute this?

63. This question has already been answered by the Judge of Gya, who held that striking off an execution case does not invalidate an attachment unless the case is struck off for default of the decree-holder. The facts in this letter, as stated, bring the Ranee's attachment directly under this category; but they are false, as has been already shown.

64. Mr. Tayler's letter proceeds:

On what ground, then, on what evidence, did this Judge in the first instance record this grave accusation? Not on the evidence of Enayut Hossein, my native agent, for his evidence was set aside by the Court as unworthy of trust.

65. Enayut Hossein's evidence was disbelieved as to the fact that the purchaser was informed of the attachment, and that the amount of it was fixed at Rs. 14,000. The concealment was proved by Ahmedoollah and the other witnesses produced by the plaintiff.

66. Farther the letter goes on:

Whatever may have been the dishonesty of his pleading and answer to the suit, where were the materials to justify the charge that I perpetrated a fraud in selling my estate in October 1866?

67. Mr. Tayler must know that that was not the charge, and that the fraud alleged consisted of his suppressing the fact of the attachment.

68. The letter proceeds:

And if the original charge is thus shown to be without reason, ground, or evidence, what will be said when it is known that after the solemn affidavits taken by me before the Court, and the full proof I have given of my entire blamelessness in the matter, Mr. Justice Dwarkanath Mitter refuses, on grounds of the narrowest technicality, to expunge his remarks, and tells me that a criminal prosecution against my native agent, if conducted to a successful termination, will be a complete vindication of my character. (I quote from memory of what he said at the time).

69. Here again the judgment and the reasons for it are suppressed. I cannot understand what Mr. Tayler's notions of justice are, if he holds that a refusal to act upon a charge of perjury against a man behind his back is a matter of the narrowest technicality.

70. Mr. Tayler proceeds:

I should certainly have thought that a Judge, endowed with those high qualifications which are generally believed to be essential to the due discharge of his duties, would have gladly seized the opportunity, when he found that he had unwittingly and unjustly slandered an absent suitor, to retract his words and expunge them from the record, instead of referring me to a process not only of doubtful issue, but which is actually impracticable in execution, for there is no criminal charge which could be framed against my agent in this case. He cannot be indicted for perjury without the express sanction of the Civil Court. He cannot be charged with false verification because he induced Mr. Kelly, ray English agent, to verify the statement put in on his behalf. He certainly disobeyed my instructions, but he fought the case and gained a decree in my favour in the District Court.

71. If Enayut Hossein was guilty of perjury, as charged by Mr. Tayler, he might clearly have been charged with perjury. Mr. Tayler would in all probability have had no difficulty in obtaining leave to prosecute him. If Mr. Tayler had no evidence to prove perjury, he ought not to have made the charge.

72. Mr. Tayler continues:

On what possible grounds could I frame or conceive a criminal charge against him with the slightest chance of bringing such charge to a successful termination?

So the happy sequel is, that I am unjustifiably accused. The accusation is clearly disproved. My accuser refuses to retract, and refers me for vindication of my character to an impossible remedy.

'It is a satisfaction at least that the Honorable the Chief Justice has publicly disclaimed all participation in this cruel wrong.'

All that I stated was that I had nothing to retract. I left it to Mr. Justice Dwarkanath Mitter to say what he thought right with reference to his own judgment.

The next letter is that of the 12th April; it runs thus:

First Fury.--Thou thinkest we will rend thee, bone from bone.

And nerve from nerve, working like fire within?

Prometheus.--Pain is my element, as hate is thine!

Ye rend me now, I care not.'

Prometheus unbound.

To the Editor of the 'Englishman.'

Sir,--Two or three days ago, I addressed you on the subject of Mr. Justice Dawarkanath Mitter's charge against me of 'fraud.' What I am now about to relate is an appropriate and somewhat amusing supplement to the narrative. At the very time I was in person protesting against this insulting and unfounded imputation, what was taking place in the same district and before the same Court in which the attachment of my estate had taken place?

'Listen, and be edified. Some weeks ago, I had myself attached a house belonging to a judgment-debtor against whom I held a decree for Rs. 5,000. The house was worth about that sum. Before the sale, however, my irresistible old maid of Ticaree, who is in dangerous rapport with all the Amlah of all the Courts, having a

stray claim against me of Rs. 500 for costs, attached my decree for Rs. 5,000.

73. Here is a direct charge against the Ranee that she is in rapport with all the Amlah of all the Courts. Was it necessary for the vindication of Mr. Tayler's character that the discharged Mookhtear should turn upon his former client and endeavour to bring her into ridicule and contempt? The lady who is styled my irresistible old maid of Ticaree' is a lady of rank and position: above all, she is a Hindu widow, a state which Mr. Talyer from his experience must know is one in which she is removed from all worldly pleasure. Is it because she discharged Mr. Tayler from her service, or because she holds some stray decrees against him which she seeks to enforce, that she is to be slandered and ridiculed? Her sex, her misfortune, ought to have protected her from insult and indignities.

74. I have no doubt that the charge was intended to convey the imputation that all the Amlah of all the Courts in the district are under undue influence exercised over them by her. But even if this was not the meaning of the slander, there was the intention to ridicule; and why was this? Mr. Tayler has positively sworn that the only object of this letter was to vindicate his character. Would he have thus written if he had continued to be the Ranee's Mookhtear on a salary of Rs. 500 a month, with extra reward for winning suits? Is this part of the edification which he promises to those who listen? Let me not be misunderstood. I do not charge this as part of the contempt of the Court. I refer to it merely as evidence of Mr. Tayler's animus, and to test the credibility of his affidavits.

75. Mr. Tayler goes on:

And now for judicial wisdom! Instead of allowing the sale to proceed, subject to this lien for Rs. 500, which would, of course, have been paid out of the proceeds, to the satisfaction of justice and all the parties concerned, the Judge strikes the case off the file! The Ranee steps in with another decree against the same party and the house is sold for her benefit ! Meanwhile my agent at Patna, directly he hears of the attachment of my decree, sends off Rs. 500 in cash and prays for the sale of the house.

What is the order? Your case has been struck off. Ergo, your attachment has fallen to the ground, and another has reaped the fruits of your diligence!!

76. This judgment is not intelligible, but, right or wrong, it did not justify the aspersions on Mr. Justice Dwarkanath Mitter.

77. The letter proceeds:

Now, just observe how I am dealt with. Because, in the one case I acted in the belief that the attachment of my own property had ceased in consequence of the case being struck off the file, Mr. Justice Dwarkanath Mitter declares I perpetrated a 'fraud.'

78. Now is this true? Did Mr. Justice Dwarkanath Mitter declare that Mr. Tayler perpetrated fraud because he acted in the belief that the attachment had Cases in consequence of the case being struck off the file? The fact was not before him when he delivered the first judgment. His reasons for not withdrawing the remarks were given in his judgment in review.

79. The letter continues:

Because, in the Court of Gya, my case of execution had been struck off the file (and that inexcusably), I am robbed of Rs. 5,000 on the ground that the attachment had ceased.

Thus justice, like the sword of Ali, strikes me at one and the same moment with both edges of the redoubtable Zoolfikar, and each time, as was Ali's pleasant custom, with a shout of insult and derision.

At the voice of Mr. Justice Dwarkanath Mitter down goes my reputation; on the dictum of the District Judge away goes my money; both Judges acting on grounds diametrically opposed to each other.'

What was meant by the words 'shouts of insult and derision' with reference to Ali's sword, except that Mr. Justice Dwarkanath Mitter, who was compared to one of the edges, insulted and gloried in his insult?

80. Mr. Tayler proceeds:

With all respect to the majesty of the ermine, I cannot but think that such instances of human frailty should teach our Judges, whether high or low, the melancholy lesson that after all they are but fallible mortals, and at least make them pause before they aggravate the wrong of an erroneous judgment by the far greater wrong of wanton insult and unfounded aspersion.

The last letter is dated 13th April 1839; it commences thus:

'Dogberry.--Come you hither, Sirrah; a word in your ear, Sir; I say to you, it is thought you are false knaves.

Borachio.--Sir, I say to you, we are none.

Dogberry.--Well, stand aside. Fore God, they are both in a tale,

Have you writ down that they are none?

Much Ado about Nothing.'

Here let me sak how it was necessary for the vindication of Mr. Tayler's character to introduce Dogberry into the scene?

'To the Editor of The 'Englishman.'

'Sir.--Will you allow me a few more last words about the late assault of Mr. Justice Dwarkanath Mitter, and forgive me for again referring to the irrepressible 'Ego.' Thackeray's pithy defence of egotism is, that if a man tread on my corns, I am the sufferer, and who so well as myself can describe my woes? But this matter has public as well as private interest; others have corns, and there are more than one Mitter who may tread on them.

'But what I am now about to represent is a new incident in the case, and one which renders the Judge's accusation so thoroughly absurd that I am bound to give it publicity.

'The only conceivable ground hitherto supposed to exist for casting a stigma upon me was that the Judge sold my estates under the former attachment, and therefore, that that attachment did exist at the time of my private transfer of the estate.

'This could not really alter the case as far as my fraud' was concerned, because, even if he had done so, he would have acted in direct opposition to the established practice, and it was quite enough for my moral absolution to show that I believed, and was justified in the belief, that the attachment bad ceased. No judicial 'expost facto' eccentricity could alter or affect this state of things.

But I have within these two days ascertained that even this little homeopathic globule of justification does not exist! but that the Judge before he brought the estate to sale, directed a new order of attachment, thus showing by his own proceedings that he also deemed the old attachment to have become null and void.

81. Here there is again falsehood and concealment; falsehood in representing that the second attachment was a new incident in the case and concealment in keeping out of sight the fact that in one defence set up to the suit, the validity of the attachment or of the sale under it was never questioned. The question was, admitting the validity of the attachment and of the right to enforce it by sale of the estate, whether the plaintiff knew of it at the time of sale, and if not, whether Mr. Tayler knew of it and fraudulently suppressed or concealed it. The discovery of the fact of the second attachment, even if not known to Mr. Tayler before, could not affect the question whether he fraudulently concealed the first attachment, or the fact of the first attachment continuing in force. But it is clear that this attachment, stated to have been discovered by Mr. Tayler only two or three days before writing the letter, was a matter known when the written statement was put in on behalf of Mr. Tayler, and was actually referred to in the 3rd paragraph as the proceeding of the 13th February 1867, and was also decided by the Judge of Gya not to have affected the first attachment. The Judge speaks of the property having been again attached: of the intervenor's objection that she purchased before the second attachment, and he decided that the first attachment did not become null and void

by reason of the second attachment. So much for Mr. Tayler's discovery.

82. The letter goes on:

Thus the infinitesimal peg upon which Mr. Justice Dwarkanath Mitter suspended his insulting imputation subsides into space

The confident and uncompromising tone of his accusation had deceived even me, and I had hitherto concluded that he had at least thus much of fact to justify his anathema.

But it now appears that he made no enquiry whatever as to whether the sale took place under a fresh attachment, or not!! before he thus vilipended me.

83. There was no necessity to enquire, because the matter was no part of the defence set up.

84. The letter concludes:

We have all heard or read among the mysteries of human nature of that strange idiosyncrasy which enables some men to detect, by a certain internal irritation, the presence, though unseen, of a cat. It appears to me that of late years some such element of anti-feline irritation must appertain to my unhappy person, for there is a certain class among the official principalities of Bengal who, directly I am brought into contact with them, appear to be at once affected by an overpowering internal excitability, which affects the understanding even of the wise and good, and intensifies the folly of the foolish, but at the same time always issues in one result--injury, insult or wrong to myself.

When the true history of mesmeric repulsion is unravelled, perhaps the cause may be traced.

85. Can any one doubt, after reading the context, the reference to the judgment of Mr. Justice Loch and Mr. Justice Norman in the first letter, that the words official principalities' are intended to include the Judges of the High Court, or some of them, and to accuse them of a want of impartiality, fairness, and courtesy in all cases in which Mr. Tayler is concerned as a suitor, which always result in injury,

insult and wrong to him?

86. I will read a passage or two from Lord Hardwicke's judgment in a similar case.

87. Lord Hardwicke said in St. James's Evening Post case (1742) 2 Atk. 469 at p. 470 : 26 E.R. 683:

Nothing is more incumbent upon Courts of Justice than to preserve their proceedings from being misrepresented; nor is there anything of more pernicious consequence than to prejudice the minds of the public against persons concerned as patties in causes before the cause is finally heard.

It has always been my opinion, as well as the opinion of those who have sat here before me, that such a proceeding ought to be discountenanced.

But, to be sure, Mr. Solicitor-General has put it upon the right footing that, notwithstanding this should be a libel, yet unless it is a contempt of the Court, I have no cognizance of it. For whether, it is a libel against the public or private persons, the only method is to proceed at law.

The defendant's Counsel have endeavoured two things--1st, to show this paper does not contain defamatory matter; 2ndly, if it does, yet there is no abuse upon the proceedings of this Court, and, therefore, there is no room for me to interpose.

Now, take the whole together, though the letter is artfully penned, there can remain no doubt, in every common reader at a coffee house, but this is a defamatory libel.

88. The Lord Chancellor then stated, with reference to the course which had been followed in that case of alluding to the persons libelled by the initial letters of their names, that:

All the libellers of the kingdom know now that printing initial letters will not serve their turn, for that objection has been long got over.

89. He then proceeded:

It is plain, therefore, who is meant; and as a Jury, if this fact was before them, could make no doubt, so as I am a Judge of facts, as well as of law, I can make none.

I might mention several strong cases, where even feigned names have been construed a libel upon those persons who were really meant to be libelled.

I shall take notice but of one, and that is the case of Mrs. Dodd, who printed a letter abusing the late King, under the name of Merriweis Sophy of Persia; it was tried before a Jury of gentlemen of great honour, who were so well satisfied of the real meaning, that, notwithstanding the whole was concealed under fictitious names, they found the publisher guilty.

Next, as to the expression in the paper, that 'there were even here in England some gentlemen of note and character who did not scruple to turn affidavit men.' Mr. Solicitor-General has insisted this may be taken in a good sense as well as a bad one, because a man who swears true, is as much an affidavit man, as if he swears false, and the Court should take it in mitiori sensu.

I will not take upon me to say whether, upon an action at law, this could be supported as libellous upon the strict rules.

But, I believe, there is nobody who is conversant in the proceedings of this Court, but must know that this expression means persons who are ready, upon all occasions, to make affidavits, without regarding whether they have any conusance of the facts.

90. The use of the words a certain class of official principalities of Bengal' cannot deceive the Court. There is no doubt it includes one or more of the Judges of the High Court, and I have no more doubt as to what Mr. Tayler meant by the words being affected by an overpowering internal excitability which affected the principalities when they came into contact with him, and which always resulted in injury, insult, or wrong to him,' than Lord Hardwicke had as to the meaning of the words 'affidavit men.'

91. These letters are not fair criticisms: they are slanderous effusions, as regards the Ranee of a disappointed Mookhtear who has been dismissed from her service, and, as regards the Judge of a disappointed suitor who has failed in his case.

92. The charge against Mr. Justice Dwarkanath Mitter, of casting upon Mr. Tayler an unmeasured imputation without one title of evidence to support it, was not only false, but false within Mr. Tayler's own knowledge. This I will prove out of his own mouth.

93. In the letter to the Editor of the Englishman, dated 12th February 1869, Mr. Tayler says:

I have just arrived from England, and one of the first pleasant things presented to me has been your paper of December 1st, containing the decision of the High Court in the appeal Musammat Wuzeerun (appellant) versus William Tayler (respondent).

From this decision I find that, in a suit instituted against me after I had left India, and conducted on my behalf by my native Mookhtear, Enayut Hossein, the High Court has declared me guilty of fraudulent concealment of attachment (in its legal sense) in regard to an estate which I sold.

I do not complain of this decision, for it is based on statements and evidence put forward by Enayut Hossein which are quite sufficient to justify the conclusions of the Court, which regards them as mine.

94. Again, in his petition of review, on the 17th February last, Mr. Tayler says:

Your petitioner, having just returned to India, has read, he need not pay, with pain and mortification, the decision of the High Court in the case of Musammat Zahoorun passed on the 19th November 1888.

Your petitioner cannot reasonably demur to the decision, based, as it is on the defence set up by his native Mookhtear, and supported by the evidence which he has volunteer ad in the case.

'All your petitioner now desires to do is to inform the Court that the statement put in and the evidence given by Enayut Hossein and his creatures are totally false, made and given without the approval, concurrence, or knowledge of your petitioner, and in direct opposition to the instructions given by him to the said Enayut Hossein before his departure from India.

95. Holding this opinion, Mr. Tayler knew that, according to the case as it stood when Mr. Justice Dwarkanath Mitter pronounced judgment, he was fully justified in pronouncing it as he did. Mr. Tayler substituted a fresh state of facts, which was false, and wilfully concealed the real one, and he criticised the judgment with reference to that statement. Was this honest? Was it fair criticism, in good faith, of the acts of a public man?

96. I could scarcely believe that I correctly understood Mr. Tayler's observations which he made with reference to his letter of the 12th February, and his attempt to reconcile the passage which I have quoted with the slanderous imputations in his subsequent letters.

97. He stated that when he wrote the first letter he was under the impression that the Chief Justice as well as Mr. Justice Dwarkanath Mitter had imputed fraud to him, but that he had since been gratified by finding from the explanation of the Chief Justice that he had put only a hypothetical case; that if the observations of the Chief Justice had been to the effect which he had supposed, he would have had no cause to complain of Mr. Justice Dwarkanath Mitter, as he would then have been concurring with the Chief Justice, after he had considered all the facts.

98. I called his attention to the fact that he had reiterated the same thing in his petition for review. He then stated that it was not until after the hearing of that petition that he had heard the explanation of the Chief Justice.

99. I can scarcely trust myself to characterise this explanation of Mr. Tayler. I wish merely to ask whether it was just and fair or manly on the part of Mr. Tayler to impute to Mr. Justice Dwarkanath Mitter that which he would not have imputed to the Chief Justice, if he had come to a similar finding. How is it possible that there could have been evidence sufficient to justify the Chief Justice alone, or the Chief

Justice and Mr. Justice Dwarkanath Mitter jointly, in imputing fraud, if there was not one tittle of evidence to support the imputation when made by Mr. Justice Dwarkanath Mitter alone?

100. I have now shown beyond all doubt that there was not a shadow of justification for Mr. Tayler's charges against Mr. Justice Dwarkanath Mitter, and that the public could not have been misled by any criticisms if they had been based upon the truth, the whole truth, and nothing but the truth I have also criticised what Mr. Tayler has been pleased to style his intellectual and searching criticism, and I have no hesitation in declaring that his letters do not contain fair criticisms, but slanderous assertions and false statements. A fair critic must not misrepresent, and he must not wilfully conceal the truth. He is not bound to 'extenuate,' but he must not 'set down ought in malice '

101. Mr. Tayler's first object in writing the letters may have been to vindicate his own character, but vindication was not the sole object of all that he inserted in them. Besides, every honest man knows that he has no right to vindicate his own character by reflections upon the character of another, based upon false statements and wilful suppression of the truth. I do not believe that there is an editor of a single journal in this country, or in any other, who, having all the facts before him, would, unless influenced by malice or improper motives, have criticised the judgments of Mr. Justice Dwarkanath Mitter in the way in which Mr. Tayler has had the audacity to write about them.

102. There can be no doubt that the publication of such letters is a contempt of Court. It is unnecessary to refer to many oases in support of that position.

103. 'Nothing,' said Lord Hardwicke in the case already cited, 'is more incumbent upon Courts of Justice than to preserve their proceedings from being misrepresented.' It is a matter of the greatest importance that Judges should possess the confidence of the public. Such confidence tends much to the satisfactory administration of justice.

104. In Mr. Lechmere Charlton's case (1837) 2 My. & Cr. 316 at p. 339 : 40 E.R. 661 : 45 R.R. 68 Lord Cottenham said:

The power of committal is given to Courts of Justice for the purpose of securing the better...administration of justice. Every writing, letter, or publication which has for its object to divert the course of justice is a contempt of the Court. It is for that reason that publications of proceedings which have already taken place, when made with a view of influencing the ultimate result of the cause, have been deemed contempts. It would be strange, indeed, if the Judges of the Court were the only persons not protected from libels, writings, and proceedings, the direct object of which is to pervert the course of justice. Every insult offered to a Judge in the exercise of the duties of his office is a contempt; but when the writing or publication proceeds further, and when, not by inference, but by plain and direct language, a threat is used, the object of which is to induce a Judicial Officer to depart from the course of his judicial duty, and to adopt a course he would not otherwise pursue, it is a contempt of the very highest order.

105. In Crawford's case (1849) 13 Q.B. 613 at p. 627 : 18 L.J.Q.B. 225 : 13 Jur. 955 : 116 E.R. 1397 : 78 R.R. 479 Mr. Justice Patteson said:

It is...objected that the Court could have no general power of commitment for a libel published out of Court some time before. This point has not been expressly decided upon. In Von Sandau's case (1845) 6 Q.B. 773 : 14 L.J.Q.B. 154 : 9 Jur. 296 : 115 E.R. 291, the libel appears to have been published both in Court and out of it. In Peg. v. Almon (1765) Wilm. 243: 252-271 : 97 E.R. 94 : See 19 How. St. Tr. 1082 note, there was a very learned judgment by Chief Justice Wilmot, which he intended to deliver, though it was not delivered in fact, the case having been dropped. He satisfactorily shews that a Court of Record has power to punish, by commitment for contempt, a libel published while the Court is not sitting. There must be a choice as to the mode of proceeding; for he says that the punishment may be by indictment or by committal for contempt: he treats it throughout as a matter of election. That may be an answer to the difficulty suggested by my brother Coleridge to Mr. Peacock.' (The difficulty suggested was whether a commitment for contempt could be pleaded as an answer to an indictment for the same publication). 'We need not, however, determine as to this : it is enough for us to see that the Court has the power; and that is clear law. If that be so, the question whether the particular publication be libellous or contemptuous is clearly,

as has been said in many instances, a question for the Court which commits. We have not to enquire into this matter, which has been adjudicated upon by a Court of competent jurisdiction.... The fact of authorship is admitted by Mr. Crawford, who comes forward to avow it, openly and very properly. The construction of the publication was for the Court. We, therefore, cannot interfere unless there has been some error in the manner and form of the proceeding.

106. In the same case Mr. Justice Erle said:

Then is there here a lawful ground for committal? The power of Courts to commit for contempt in this country has been discussed : and it has been established, on good reason, that a Tribunal has power to protect itself by committing for a contempt relating to the exercise of its powers. The commitment here was for a contempt in publishing, while the Court was not sitting, and perhaps at some distance of time and place, a libel on the proceedings of the Court. In the elaborate judgment to which my brother Patteson has referred, it if shewn that such a publication may have a strong and immediate tendency to paralyze the proceedings of this Court. Such cases may easily be conceived; the propriety of the decision in the particular case is a question for 'he Court itself.

107. In Re: Wallace (1866) 1 P.C. 283 : 4 Moore P.C. (N.S.) 10 : 36 L.J.P.C. 9 : 15 W.R. 533 : 16 E.R. 269 a Barrister and Attorney of the Supreme Court of Nova Scotia wrote a letter to the Chief Justice reflecting on the Judges and the administration of justice in the Court. The Court suspended him for it. On appeal to the Privy Council, the suspension was reversed. Lord Westbury, in delivering judgment, said:

The letter was a contempt of Court which it was hardly possible for the Court to omit taking cognizance of. It was an offence, however, committed by an individual in his capacity of a suitor in respect of his supposed rights as a suitor and of an imaginary injury done to him as a suitor and it had no connection whatever with his professional character, or anything done by him professionally, either as an Advocate or an Attorney. It was a contempt of Court committed by an individual in his personal character only. To offences of that kind there has been attached by law and by long practice a definite kind of punishment, viz., fine and

imprisonment.... We think...there was no necessity for the Judges to go farther than to award to that offence the customary punishment for contempt of Court.

108. After Mr. Taylur had been brought into Court, I asked him whether he had caused the letters in question which bore his name to be published. He at first hesitated. I do not state this by way of complaint against him, for he was possibly taken by surprise at the moment, and be almost immediately afterwards did, as I should expect Mr. Taylor or any other gentleman, who had sent a letter to a newspaper for publication would do, he very properly admitted that he was the author of the letters, and that he had caused them to be printed and published. I am not quite certain whether I spoke before his admission of what I should do, or spoke after it of what I should have done, if he had not admitted the publication. My belief is that it was the former, and that I said that if Mr. Tayler disavowed the letters, I should be compelled to send for the printer and publisher of the paper, who was just as liable in point of law to be punished for contempt as Mr. Tayler, or words to that effect. This opinion has been challenged, and I proceed to prove that it was well founded.

109. There can be no doubt that the publication in a newspaper of letters like these has in fact a much more injurious effect than the mere writing and sending them to the editor of a newspaper. If the editor of the Englishman had torn up Mr. Tayler's letters and put them into his waste basket, no great injury to the public, or to any one else, would have been caused. But when they were published in the Englishman, they were spread over the country wherever that newspaper had circulation. If the writing of those letters was injurious, the injury was increased a thousand fold by the publication of them in the newspaper to all the readers of that journal. The printer and publisher of the paper doubtless had no feeling upon the subject. The real guilt of publication was mainly that of the author who sent them to the editor in order that they might be published. Under these circumstances, the Court had its election to punish both the author and publisher of the newspaper, or either of them.

110. In this case the Court saw no necessity to punish both. They intended to deal only with the author. If the author, when brought into Court, had disavowed the

publication, the Court would not have allowed justice to be defeated or baffled. It would have sent for the publisher of the paper, and if he had failed to produce the letters or to bring the case home to the author, the Court would have held him responsible. If the printer of a newspaper publishes a letter with the name of an author attached to it, he must bear the responsibility if he is unable, when required, to prove that it was published with the authority of the person by whom it purports to have been signed. Notwithstanding all that has been said in the newspapers, I unhesitatingly affirm that that is the course which I should have adopted. I trust that I am firm enough and conscientious enough not to be influenced by anything that has been publicly said upon this subject. If I had intended to punish the publisher, I should have punished him, notwithstanding the remarks which have been made. I did not intend to punish him after Mr. Tayler avowed the authorship, and nothing that has been said would induce me to hold the publisher responsible. I have pursued the same course precisely as that which I should have pursued if no remarks upon the subject had been made in the public newspapers.

111. Now with regard to the liability of the printer, there can be no doubt, assuming that the letters are not fair criticisms. If they were fair criticisms, of course, both Mr. Tayler and the publisher of the newspaper were justified in publishing them.

112. In the case of St. James's Evening Post case (1742) 2 Atk. 469 at p. 470 : 26 E.R. 683, which I have already cited from 2 Atkyns, the contempt was committed by publishing a libel reflecting upon certain suitors in matters pending in the Court. The libel had been published in the Champion newspaper, and also in the St. James's Evening Post.

113. Lord Hardwicke said that there were three sorts of contempt:

One was scandalizing the Court itself: another was abusing the suitors: there may also be another contempt in prejudicing mankind against persons before the case is heard. There cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties' (and I may add the Judges) 'may proceed with safety both to themselves and their character.

114. It was held that the libel was a contempt of Court, and Lord Hardwicke remarked:

With regard to Mrs. Read [the publisher of the St. James's Evening Post'] by way of alleviation, it is said, that she did not know the nature of the paper which she had published, and that printing papers and pamphlets was the trade which she got her livelihood by. But though it is true, this is a trade, yet they must take care to do it with prudence and caution; for if they print anything that is libellous, it is no excuse to say that the printer had no knowledge of the contents, and was entirely ignorant of its being libellous; and so is the rule at law, and I will always adhere to the strict rules of law in these oases.

Therefore, Mrs. Read must be committed to the Fleet, according to the common order of the Court upon contempts.

But as to Mr. Huggonson' (the printer of the 'Champion' newspaper), who is already a prisoner in the Fleet, I do not think this any motive for compassion, because these persons generally take ad-vantage of their being prisoners to print any libellous or defamatory matter which is brought to them, without scruple or hesitation.

If these printers had disclosed the name of the person who brought this paper to them, there might have been something said in mitigation of their offence; but as they think proper to conceal it, I must order Mrs. Read to be committed to the Fleet, and Mr. Huggonson to be taken into close custody of the Warden.

In Crawford's case (1849) 13 Q.B. 613 at p. 627 : 18 L.J.Q.B. 225 : 13 Jur. 955 : 116 E.R. 1397 : 78 R.R. 479, which has already been referred to, it was ordered that Robert Fargher, the printer and publisher of the Mona Herald newspaper, should attend the Court on 1st February 'to answer for unlawfully and contemptuously printing and publishing' an article tending to scandalize and defame the Court. It appeared that Fargher attended and admitted that he was the printer and publisher, and expressed his regret that, in consequence of bad health, he had not given the article the consideration it ought to have had, and regretted that it should have given offence to the Court, and he tendered an apology and

offered to publish it in all the insular newspapers. The Court did not accept the apology, but forthwith committed Fargher for contempt of Court. Crawford then stated to the Court that he was the author and was willing to take the responsibility, provided the Court relieved Fargber, but that he would not acknowledge the right of the Court to act in a vague, informal, and summary manner. The Court, however, committed Crawford, and he and Fargher were immediately removed from Court in custody.

115. In a case of Cann v. Cann (1751) 2 Ves. Sen. 520 : 2 Dick. 795 : 28 E.R. 332 it appears that:

Mrs. Farley, having been committed to the Fleet upon motion of the plaintiff for having published an advertisement in the 'Bristol Journal,' relating to the answer in Chancery put in by the defendant, Sir Robert Cann, moved to be discharged, having paid for costs of the contempt and submitted; as also the defendant did, confessing the advertisement was put in at his instance. The plaintiff did not oppose the discharge of Mrs. Farley, and left the matter to the Court. Lord Hardwicke, Chancellor, said, his reason for committing was not only for the sake of the party injured by the advertisement, but for the sake of the public proceedings in Court, to hinder such advertisements, which tend to prepossess people as to the proceedings in the Court. But as on a prosecution for a libel in the King's Bench for publishing a scandalous advertise-merit, if they confess in what manner it was brought to them and everything about it, that Court takes the matter into consideration to alleviate the punishment; so here, though Mrs. Farley's ignorance of law was no justification for the publishing the advertisement, yet having discovered in what manner it was brought to her with other advertisements, and disclosed everything, it was a ground to alleviate the punishment. Therefore, he granted the motion.

116. In Ex parte Jones (1806) 13 Tea. (Jun.) 237 : 33 E.R. 283 Lord Erskine, whom no one will venture to charge with having endeavoured to shackle the liberty of the press, said:

In this dedication the object is avowed by defaming the proceedings of the Court, standing upon its Rules and Orders, and interesting the public, prejudiced in

favour of the author by her own partial representation, to procure a different species of judgment from that, which would be administered in the ordinary course; and by flattering the Judge to taint the source of justice. This pamphlet has been sent to me.

As to the printers, as Lord Hardwieke observes, it is no excuse, that the printer was ignorant of the contents. Their intention may have been innocent; but, as Lord Mansfield has said, the fact, whence the illegal motive is inferred, must be traversed; and the party, admitting the act, cannot deny the motive. The maxim actus non facit reum, nisi mens sit rea,' cannot be made applicable to this subject in the ordinary administration of justice; as the effect would be, that the ends of justice would be defeated by contrivance. But upon the satisfactory account, given by three of these printers, though undoubtedly under a criminal proceeding they would be in mercy (those words in their legal sense meaning amerced) in a case of contempt, though I have the jurisdiction, I shall not exercise it. The other printer appears upon the affidavits under different circumstances. Having made the observation that this pamphlet ought not to be printed, being totally uninteresting to the public, yet he does print it; and though the locus poenitentiae was afforded to him, and be was called upon not to print any more, he proceeded, until he had notice of this petition.

Let the Committee and his wife, and the printer, to whom I have last alluded, be committed to the Fleet prison.

117. Let me not be misunderstood. I have not cited the above cases as precedents as to the mode in which the Court ought to exercise its discretion. Discretion as to punishment must depend upon the facts of each particular case. I cite the oases merely to show what the law is, and what the power of the Court, not to show what the Court ought to do in the exercise of that power. If a printer were to publish defamatory and contemptuous libels sent to him for publication by a gentleman beyond the jurisdiction of the Court, or libels published in another paper beyond the jurisdiction, or if a printer should refuse to give up the name of the real author of the libel, his case would be very different from that of a printer who, having committed an error, should apologize and give up the name of the

author.

118. I am free to admit that I alone am responsible for all that has been done in this matter, though my honourable colleague does not desire to be relieved from any part of the responsibility. [sat with my honourable colleague both on the hearing of the appeal and on the hearing of the petition of the review. I knew him before he was raised to the Bench. I have sat with him frequently as a colleague, and I believe that I have had as good an opportunity as any one of forming a just estimate of his character. Though now speaking in his presence, I may be permitted to say that he is a nun of ability and learning, very unassuming, yet high minded, of a gentle, kind, and amicable disposition, independent and always ready to maintain his opinion so long as he conceives it to be right, and equally ready to abandon it if convinced that it is wrong. He is a man to whom I am sure it would give pain to injure the reputation or to wound unnecessarily the feelings of any one. He is the second native gentleman who by his own abilities has raised himself to the high position of a Judge of the High Court.

119. I saw the letter of the 7th April on that day, but being particularly engaged I did not read it attentively. On the following Monday, the 12th, I saw the letter of that date, and in the evening, after I returned from Court, I read it carefully in conjunction with that of the 7th, to which it referred. I then considered it necessary to vindicate the honour and character of my honourable colleague and the dignity of the Court; and having heard and believed that Mr. Tayler was about to leave Calcutta for England on the following morning, I wrote to my honourable colleague at a late hour of the night, to meet me at 6 o'clock on the following morning. He did so; after consulting together we considered it necessary to take proceedings for contempt. We adjourned to the Town Hall, where we were mat by the Under-Sheriff and the Registrar, and we ordered a writ of attachment to be issued. I may here remark that, up to the time of our meeting on the Tuesday morning, my honourable colleague had never uttered one syllable of complaint to me regarding the charges that had been made against him. If the character of any other of the Judges had been similarly assailed I should have thought it necessary to adopt a similar course. Bat it appeared to me to be especially necessary in the present case, when the attack had been made upon a native gentleman, the only one of

his countrymen who had a seat on the Bench of the High Court.

120. It now appears from the affidavit of the Sheriff's officer that Mr. Tayler intended up to the Monday to leave for England in the steamer which was to sail on Tuesday, and that on that day he was allowed by the Peninsular and Oriental Company to postpone his passage until the next steamer. The letter of Monday, the 12th, could not have been sent to the editor of the Englishman later than Saturday or Sunday, at which time Mr. Tayler must have had the intention of leaving the jurisdiction of the Court on the day following that on which the letter could be published, and in all probability he had the same intention at the time when he sent to the editor the letter published on Tuesday, the 13th instant, which we also had before us when we issued the attachment.

121. There were two modes of proceeding open to us: one by a Rule calling upon Mr. Tayler to show cause why he should not be adjudged guilty of contempt of Court,--the other by attachment, under which Mr. Tayler might be arrested and brought into Court for a similar purpose. If we had gone through the force of making an affidavit of the facts founded on our own belief, in order to satisfy our own minds that a contempt of Court had been committed and had issued a Rule to show cause, which Mr. Tayler probably considered was the only course which the Court could adopt (for on his being arrested he asked the Sheriff's officer why he had not had notice), if, I say, we had made such an affidavit and issued a Rule to show cause to be served on Mr. Tayler on board the steamer on the eve of his departure, we should have deservedly brought ourselves, and we should also have brought the Court and its process, into utter decision and contempt. If we had asked the Registrar to make an affidavit, he knew no more of the facts than we did. He could merely have sworn that he had seen the letters in the papers with Mr. Tayler's name attached to them, and that he verily believed that Mr. Tayler had caused them to be published; and, further, that he had heard and believed that Mr. Tayler was about to leave the jurisdiction of the Court. We had as much knowledge ourselves of the facts without such an affidavit as we should have had with it. We, therefore, determined to act upon our own knowledge of those facts, which, if sworn to by any one to the best of his belief, would have bean sufficient to support a Rule to show cause. There was no private complainant. The charge was

made by the Court itself upon its own knowledge of facts, which, if sworn to by any one to the best of his belief, would have made a prima facie case of contempt of Court. We concluded that the editor of the 'Englishman' would not have published letters with Mr. Tayler's name attached to them without having had them authenticated, and we were right in our conclusion that Mr. Tayler had caused the letters to be published. The writ of attachment which was issued was not a commitment for contempt, but a process to bring Mr. Tayler into Court to answer a charge of contempt. It was necessary, under the circumstances, not merely to vindicate the honour of the Judge and the dignity of the Court, but also to teach gentlemen like Mr. Tayler that they cannot commit contempts of Court with impunity even though they are about to sail the next day for England, and also to prove to the public that justice is not to be baffled or defeated by artifice.

122. I will cite two or three out of many authorities to show that the Court is not powerless in such cases.

123. In Bacon's Abridgment, Tit. Attachment, page 386, it is said:

An attachment is a process that issues at the discretion of the Judges of a Court of Record against a person for some contempt for which he is to be committed, and may be awarded by them upon a bare suggestion, or on their own knowledge, without any appeal, indictment, or information for though by the Statute of Magna Charta none are to be imprisoned sine judicio parium vel per legem, terrie, yet this summary method of proceeding, being absolutely necessary to the furtherance and execution of justice, seems to have been long practised, and is certainly now established as part of the law of the land.

124. The rule is laid down to the same effect in Comyn's Digest, Tit. 'Attachment,' A.i., and in Hawkins' Pleas of the Crown, 218.

125. In Lex v. Jones (1795) 1 Strange 185 : 93 E.R. 462:

The defendant having treated the process of the Court contemptuously, an attachment went against him, without a Rule to show cause, (according to Salk. 84) and there being intimations that he relied on the assistance of his fellow

workmen to rescue him, the Court sent for the Sheriff of Middlesex into Court, and ordered him to take a sufficient force.

126. I am now speaking in the presence of a large and enlightened audience, and before a learned and independent Bar, a profession of which the members, from their education and habits of mind, have ever been the watchful guardians of the rights and liberties of the people, and the foremost to protect against any arbitrary or unconstitutional exercise of power. If I have exercised tyrannically the powers committed to me (as I have been charged with doing), or if I have exercised them unconstitutionally, I know that my conduct is subject to be criticised by the Bar and by the public; but I have no misgivings, because I know that if criticised it will be criticised honestly and fairly, and independently. I claim not to be free from criticism : I am always open to conviction, and if convinced of error, I am ready to acknowledge it.

127. Before I conclude I wish to say a few words as to the course which has been taken out of doors since these proceedings were commenced.

128. On the 16th April, whilst this matter was pending, an article appeared in the 'Englishman' which I will read:

We are not surprised to find that our views respecting the action of Sir Barnes Peacock, in summarily arresting and dragging Mr. Tayler before the Court for writing to a newspaper, are likely to be shared in by contemporaries who have some influence on public opinion. The Friend of India says:Sir Barnes Peacock stated that the printer and publisher of the Englishman also was liable to prosecution,--an opinion which raises an interesting question as to the liberty of the press in India.

129. The Pioneer, having heard the news of the arrest by telegraph, thus comments:

If the letters alluded to be those in the Englishman of the 7th and 12th instant, and if the fact be that Mr. Tayler has been abruptly arrested by the High Court solely in consequence of having written them, we do not wonder at there being excitement.

Such an act would naturally seem to every Briton an act of presumptuous tyranry. But we can hardly believe the fact of the arrest, or if it has been made, it must have been made on some other ground than merely that Mr. Tayler challenged and quizzed the decision of a Judge of the High Court. Sublime personage as he is, a Judge's judgment is no more sacred from fair criticism than any other publication, and well for the purity of justice that it is so.

130. Having made the above quotation from the Pioneer, the Englishman proceeds:

We suspect that Sir Barnes, if he attempts to carry out his dictum too for, will raise a storm not easy to quell. There are many people who do not care for the grievances of Mr. Tayler, but who will not brook an encroachment upon their right of appeal to the press concerning the public acts of public men. A Judge's acts are no more exempt from public criticism than those of a Chairman of the Justices.

131. Again, to show how little the facts of the case were understood, I will read an extract from an article in the same paper, dated the 19th April. It is there said:

Attention has been drawn to the fact, which no one, as far as we have heard, questioned, that Sir Barnes Peacock originally held, in the case which seems likely to gain so much notoriety, that Mr. W. Tayler had been guilty of fraud, and that this opinion had been concurred in by Mr. Justice Mitter. The contention raised in Tayler's letters is, however, that he was afterwards allowed an opportunity of explanation, and that the Chief Justice then acquitted him of fraud whilst Mr. Justice Mitter moderated his decision in no way whatever.

132. I have already shown most distinctly that I never did find Mr. Tayler guilty of fraud; that I had no charge to retract, and that I never did, after hearing his explanation, acquit him of anything.

133. It would have been well if all the public newspapers had followed the calm and dignified course which in the first article which I have read is reported to have been taken by the Friend of India. In that paper the opinion expressed by the Chief Justice was brought to notice, and was treated as one which raised an interesting

question as to the liberty of the press in India. That course left the question as to the liability of the printer and publisher open to discussion, after the Court should have explained the grounds upon which it had acted, and had referred to the authorities in support of the opinion which it had expressed. But, notwithstanding the very proper course which had been taken by the Friend of India, we were told in a journal published on Saturday even-in? last that the members of the Fourth Estate had protested against this unexpected attack on the liberty of the press, and that with happy unanimity they had warmly denounced the action taken by the Chief Justice. To pay that the press had unanimously denounced, without waiting for the explanation of the Judges, is a libel rather upon the press than upon the Chief Justice.

134. I have referred to the above articles for the purpose of now declaring publicly that to charge a Judge with presumptuous tyranny for the mode in which he is proceeding in a matter pending before him, or to publish anything respecting that matter whilst it is under consideration, with a view to induce the Judge to alter his course, is a grave contempt of Court. The Englishman by publishing the article from the Pioneer has rendered itself as responsible for the article as though it had been one of its own. I am willing to believe that the expressions in the article of the 16th April, to which I have referred, were made without duly reflecting that the matters to which they related were then sub judice, though they would not have been justifiable at any time.

135. I am an unflinching advocate of the liberty of the press. I believe that its freedom is one of the main bulwarks of the rights of the people. I claim no exemption as regards my public acts from the most rigid scrutiny and the most unsparing criticism. All I claim is, that there shall be no misrepresentation and no wilful or unfair concealment of facts; and that those who deny infallibility to the Judges shall not claim infallibility for themselves. I have had no cause to complain of the public press since I have been in this country. Speaking generally, I believe it to be fair, independent, and impartial. There has not, I believe, been a single criminal prosecution against a newspaper since I have had the honour to hold the office of Chief Justice, and there have been only one or two private actions for libel. The press in this country addresses itself for the most part to readers of

education and intelligence, men The judge and form opinions for themselves. The press is fair, it is not scurrilous; the public are not captious; and public men do not object to have their public acts freely discussed and fairly criticised. Our Courts, therefore, are generally free from all complaints against the press, either civil or criminal, on the ground of defamation,

136. And now I wish to declare publicly and emphatically that the Judges are not, and cannot be, influenced in the discharge of their duty by any attacks made upon them by the press. Nothing that has been said by the press upon this subject, and nothing that can be said, no fear of the threatened storm, can even divert me or my honourable colleague from pursuing that plain, straightforward course which our consciences dictate. No unfair criticisms can disturb my equanimity, nor in the slightest degree affect my happiness. They are based on the consciousness that the honest and conscientious discharge of my duty has ever been the ruling principle of my life. That is a foundation too strong to be undermined by critics, who attempt to criticise that which they do not understand, or to be shaken by any storms which it is in their power to raise.

137. I am a servant of the public, and I respect their opinion. If they believe that I have exercised in an arbitrary, tyrannical, or oppressive manner the great powers which have been entrusted to me, or if they believe that I have exercised them unconstitutionally, let them express that opinion in a manner which cannot be misunderstood, and I am ready to bow to their verdict. Bat I shall not accept the expressions of a few newspapers as the general expression of public opinion. If ever I have the misfortune to lose, whether justly or otherwise, the confidence of the public, I shall be ready to lay down those powers which, without that confidence, I shall be no longer able to exercise for the public good.

138. And now permit me to conclude in the words of Lord Mansfield:

I wish popularity, but it is that popularity which follows, not that which is run after. It is that popularity which sooner or later never fails to do justice to the pursuit of noble ends by noble means. I will not do that which my conscience tells me is wrong, to gain the daily praise of all the papers which issue from the press. I will not avoid doing that which I think right, though it should draw upon me the whole

artillery of libels, all that falsehood and malice can invent or credulity can swallow.

139. Mr. Tayler was then addressed by the Chief Justice as follows:

William Tayler, the Court has considered all that you have urged, and it adjudges that you have committed grave contempts of Court in having published the letters of the 7th, 12th, and 13th April in the 'Englishman'. I have already fully stated my reasons for holding that those letters were not fair or honest criticisms, but that they were founded upon misrepresentation and wilful concealment of the true state of facts. There can be no doubt that you must have known, when you published those letters, that the reflections which you were casting upon the learned Judge had no reference to the state of facts which appeared before him when he pronounced the judgment complained of but to a new state of facts, which, whether true or false, you knew were not before him at the time. It is unnecessary for me to say whether your assertion that at the time you sold the estate you were under the belief that it was not subject to the attachment in execution of the Ranee's decree, was a wilful misrepresentation or not. You must have known, as I have already shown, that the charge which you preferred against Mr. Justice Dwarkanath Mitter, of casting an unmeasured imputation upon you without one tittle of evidence to support it, was false and without any foundation. You knew that, according to the case as it stood, when Mr. Justice Dwarkanath Mitter pronounced judgment, he was fully justified in saying what he did. You substituted a fresh state of facts, of which part, to say the least of it, was false within your own knowledge, and having wilfully concealed the real state of the case you criticised the judgment and founded the charges which you made against the Judge with reference to that statement.

140. It is not even necessary to show that any part of the misrepresentation was wilful, for, whether it was so or not, you are responsible for it. You knew that the learned Judge could act only upon the facts as they appeared before him at the time, and that according to those facts there was no ground of complaint. It is no justification or excuse to say that you were not in the country when the action against you was defended, and that your agent acted fraudulently in that defence which he set up. If. a person undertakes to criticise the acts of a public man, he

must take care not to assert that which is not true as the basis of his criticism, and he is bound not to conceal wilfully anything which would show that the criticism is not well founded.

141. You have stated in your affidavit that the letters written were written for the sole purpose of vindicating your own character. I have shown that, whatever were the reasons which induced you to write those letters, you introduced into them matters which were wholly unnecessary for that vindication, and which reflected on Mr. Justice Dwarkanath Mitter and others of the Judges. I have also shown the animus with which those reflections were made. This affidavit, instead of mitigating, rather aggravates the guilt of your contempt. When you were before the Court on Tuesday last, I called your attention to the difference between the statement contained in your first letter and in the grounds of review and the assertions which you made in the letters which you subsequently published in the newspaper. In the former you stated that you had no ground of complaint against Mr. Justice Dwarkanath Mitter, based as it was on the defence set up by your native Mookhtear, and supported by the evidence which he volunteered in the case. In the letter you charged the learned Judge with casting upon you an unmeasured imputation without one tittle of evidence to support it.

142. I do not think that you have mitigated your offence by the mode in which you have endeavoured to reconcile those conflicting statements.

143. You have endeavoured to do so by stating that when you wrote your first letter to the Englishman, and when you applied for a review of the judgment, you believed that the Chief Justice as well as Mr. Justice Dwarkanath Mitter had imputed the fraud to you. I have shown in my judgment that if there was not one tittle of evidence to support the imputation when made by Mr. Justice Dwarkanath Mitter alone, there could not have been a tittle of evidence to justify the imputation if it had been made by Mr. Justice Dwarkanath Mitter in conjunction with the Chief Justice. I have no doubt whatever, looking at that statement, that your charge was an unmanly one, and that you made a charge against Mr. Justice Dwarkanath Mitter which you would not have ventured to make against the Chief Justice.

144. Further, I am of opinion that you have aggravated the contempt by contending that the charge in the last paragraph of the letter of the 13th April was not intended to apply to any of the Judges of the High Court. I have not the slightest doubt that in using the words 'official principalities' you did intend to refer to the Judges of the High Court. You say the words had reference to something gone by long ago. Bat the letter, on the face of it, could not have referred to those bygone acts, as those acts had, and could have, no connection with the charge against a Judge of the High Court. Besides those transactions occurred many years ago and in the paragraph to which I am referring you say:

It appears to me that of late years some such element of anti-feline irritation must appertain to my unhappy person for there is a certain class among the official principalities of Bengal who, directly I am brought into contact with them, appear to be at once affected by an overpowering internal excitability which affects the understanding even of the wise and good, and intensities the folly of the foolish, but at the same time always issues in one result--injury, insult, or wrong to myself.

145. In one of the letters in which you charged Mr. Justice Dwarkanath Mitter with wanton insult and unfounded aspersion, you introduced the words which I have read, and if they apply to the transactions to which you say they do apply, they have no bearing whatever on the subject, and you have sworn positively that your only object in writing the letters was the vindication of your character. But, whether you had such intention or not, you made use of language which must have conveyed that meaning to others, and was such as to lead any ordinary reader to believe that you intended it to apply to at least one or more of the Judges of the High Court. I have no hesitation in saying that the words, in the reasonable and ordinary construction of them, had reference to one or more of those Judges, and charged them with a want of impartiality in all cases in which you were a suitor.

146. It is a high and serious offence to cast unjust and defamatory imputations on a Judge. Judges are subject to be criticised, but they must be protected from unfounded defamation. Had you been charged in an indictment in England with writing such letters, I cannot think that any less punishment than imprisonment and fine would have been passed upon you, and probably the imprisonment would

have extended to a year.

147. It is not the wish or desire of this Court to impose any excessive punishment on you. You have admitted that you have committed a contempt. I do not say that that has aggravated your offence; it has mitigated it. You no doubt did intend to make charges against the learned Judge, which were not justified by the real facts, but which the public would be induced to believe were well founded, because they were based on misrepresentation, and because you concealed the real state of the case.

148. Taking all the circumstances into consideration, the Court orders that yon stand committed for one month to the civil side of the Presidency Jail, and that you pay a fine of Rs. 500, and that you be farther imprisoned till the fine be paid.

149. You state that you are willing still further to apologise. I have endeavoured to show (whether I have been able to satisfy your mind or not I cannot say) that the charges against Mr. Justice Dwarkanath Mitter were without the slightest foundation. The other charge to which I have referred is equally unfounded; and whatever your intention in publishing that part of the letter may have been, or whatever meaning you intended to convey, you were not justified in using language which would induce an ordinary reader to believe that you referred to the Judges of the High Court. If you think fit to add to the apology which you have already published (and it is for you to decide whether you can conscientiously do so or not) the Court is willing to mitigate the sentence. If, after what you have heard, you state that, upon reflection, you find that the charges which you made against Mr. Justice Dwarkanath Mitter were unwarranted and wholly without foundation, and that you are sorry for having made them, you may do so: and you may add, if you wish it, either that you did not intend to cast any reflection upon any of the other Judges, or that the reflection cast was unfounded, and if you publish that apology in the 'Englishman,' you may apply on Monday, the 3rd of May next, for your discharge on payment of the fine.

150. On Tuesday, the 27th April, Mr. Tayler addressed a petition to the Chief Justice and Mr. Justice Dwarkanath Mitter, which was sent to the Chief Justice at an early hour in the morning.

151. A writ of habeas corpus was forthwith issued by the Chief Justice to the Superintendent of the Presidency Jail, commanding him to bring Mr. Tayler into Court at half-past nine o'clock.

152. The petition was as follows:

That on the 24th of April instant, your petitioner was committed for contempt of Court in having caused to be published in Calcutta certain letters in the Englishman newspaper relating to a decision of the Honorable Mr. Justice Dwarkanath Mitter in the case noted in the margin, and was ordered to pay a fine to Her Majesty of Rs. 500, and to be further imprisoned until such fine was paid, or until the further order of the Court.

That the Court was pleased to intimate to your petitioner that, in the event of his publishing in the Englishman newspaper a further apology in the terms suggested by the Court, in addition to the apology published by him on the 22nd instant, he was to be at liberty to apply to the Court for his discharge.

That your petitioner has paid the fine of Rs. 500 imposed upon him by the Court, as will appear from the certificate of the Accountant-General of the Court, already submitted.

That your petitioner has also published in this morning's Englishman the further apology required of him.

That your petitioner is very sorry for having written the letters against Mr. Justice Dwarkanath Mitter, and is also sorry for having made use of expressions which have been considered as reflecting upon the other Judges of the Court.

That your petitioner can truly say that he never intended to reflect upon the other Judges of the Court.

That your petitioner's health, which was previously in a weak state, has been seriously affected by the anxieties attending his trial, and by his imprisonment at this season of the year.

That your petitioner had taken his passage to England, and arranged to leave by the steamer which will leave at 11 o'clock this morning.

Your petitioner having fully complied with the order of the Court, and made all the reparation in his power, prays that the remainder of the term of his imprisonment may be remitted, and that he may be forthwith discharged from custody.

153. Upon taking his seat, the Chief Justice addressed Mr. Tayler to the following effect:

Mr. Tayler.--The Court has read your petition, which is a very proper one. You have now fully submitted. You state that you have paid the fine, and that you have published in this morning's Englishman the further apology required of you. You further state that you are very sorry for having written the letters against Mr. Justice Dwarkanath Mitter, and that you are also sorry for having made use of expressions which have been condemned by the Court as reflecting upon the other Judges; and that you can truly say that you never intended to reflect upon them. You state that your health, which was previously in a weak state, has been seriously affected by the anxieties attending your trial and by your imprisonment at this time of the year; that you had taken your passage to England, and had arranged to leave by the steamer which is to leave at 11 o'clock this morning. You then, after stating that you have fully complied with the order of the Court and have made all the reparation in your power, pray that the remainder of the term of imprisonment may be remitted, and that you may be forthwith discharged oat of custody.

154. You have also forwarded a copy of a medical certificate from Drs. Macrae and Brougham, dated 25th April, in which it is stated, amongst other things, that for the last three months you have been suffering from attacks of recurrent gout with aggravated dyspepsia, from which you have become greatly debilitated; that a prolonged imprisonment, from its depressing influences, would be attended with risk of serious impairment to your health, if not with more grave consequences, and that you ought not to remain in this country a day longer than can be avoided; in fact, that you had been advised to leave India a month ago.

155. When you were before the Court on Tuesday last you expressed yourself willing to apologize. I then stated that whatever apology might be made, it ought to be published as widely and extensively as your letters to the editor of the Englishman. The case was adjourned until Saturday last, in order to give you an opportunity of publishing in the Englishman such an apology as you might see fit; and, without dictating or recommending any particular form of apology, I called your attention to the fact that you had not retracted the charges which you had publicly preferred against Mr. Justice Dwarkatath Mitter.

156. In cases of this nature a proper apology may mitigate, but it cannot wholly excuse or justify, or form a ground for a total exemption from punishment.

157. On the 22nd April you published an apology in the Englishman, but it contained no denial or disavowal of the truth of the charges which you had preferred. The Court, considering all the circumstances of the case, ordered you to stand committed to the Presidency Jail for one month, or until further orders, and to pay a fine of Rs. 500. The month was fixed as the maximum of the imprisonment which, under any circumstances, you were to undergo. A maximum was fixed in consequence of a doubt thrown out in Crawford's case (1849) 13 Q.B. 613 at p. 627 : 18 L.J.Q.B. 225 : 13 Jur. 955 : 116 E.R. 1397 : 78 R.R. 479, whether a commitment for contempt could be ' until further orders,' which might amount to imprisonment for life.

158. It was not necessary to consider whether the usual mode of framing commitments for contempt until further orders, which was the form adopted by Lord Cottenhamin Mr. Lechmere Charlton's case (1837) 2 My. & Cr. 316 at p. 339 : 40 E.R. 661 : 45 R.R. 68, and had been adopted in numerous other oases, could be supported or not. A month was fixed as the maximum, and the words 'or until further orders' were added in order to enable the Court to discharge you at an earlier period if you should make your apology complete; and you were informed that you might apply for your discharge on Monday next. You have now made your apology complete and have sent it to this Court under your signature; and you have also published a copy of it in the Englishman this morning. In addition to the apology* which you published on the 22nd instant, you say that you regret to state

that, upon reflection, you find that the charges made by you against Mr. Justice Dwarkanath Mitter were unwarranted and wholly without foundation. Further, you declare that you had no intention to cast any reflection upon the High Court or upon any of the other Judges of the Court. The Court has already determined that they could put no other meaning upon the last part of your letter of the 13th April than that it was intended to charge want of impartiality on the part of the Judges in cases in which you are concerned, which always resulted in injury, insult, or wrong to you. Whether you intended it or not you are responsible for publishing words which, in the opinion of the Court, were susceptible of no other meaning. You have been punished for your offence, you have now fully and very properly apologized; and whatever opinion the Court may entertain, it cannot fairly ask or endeavour to compel you to admit that in publishing the letters in the Englishman you had any intention or knowledge which, as a gentleman, you disavow.

159. The Court agrees with you that you have now made all the reparation in your power, or that the Court could fairly expect, and they do not wish to do anything which would add further pain to the anxiety which you have already undergone, and to the humiliation which you have suffered. You have already undergone sufficient punishment to be a warning to yourself and to others; no additional amount of punishment could add to that warning. The Court sat at this early hour, not for their own convenience, nor for any other reason, except that you might proceed to England by the steamer, and that you might not be detained in this country an hour longer than was absolutely necessary.

160. In the course of his address, the Chief Justice pointed out that there was a clerical error in the letter published in the Englishman this morning, which made Mr. Tayler say that he had no intention to cast any reflection 'upon any of the Judges,' instead of any of the other Judges, which were the words of the original apology signed by Mr. Tayler. He said this for the sake of the Court and for the sake of Mr. Tayler. The Court, after Mr. Tayler's apology with regard to Mr. Justice Dwarkanath Mitter, could not fairly ask him to say that he never intended to cast reflection upon any of the Judges, nor could Mr. Tayler, as a gentleman, have made such a statement.

161. Mr. Tayler wished to be allowed to say that the application for his discharge from imprisonment which had been made to the Lieutenant-Governor was made by his friends without his sanction. He was fully aware that the Lieutenant-Governor had no power to interfere in a case like the present, or to order his discharge from imprisonment.

162. The Chief Justice said that he had seen the medical certificates which had been forwarded to His Honour the Lieutenant-Governor, that without entering into the question whether the Lieutenant Governor had the power or not, he thought that the certificates were not such as could have justified the exercise of it. They were not even such as would have induced the Court to discharge Mr. Tayler before the end of the month, if the additional apology had not been punished; but they were certificates which might very properly influence the Court after that apology bad been made. Even without those certificates, the Court would have had no desire to inflict any further pain on Mr. Tayler, after he had so fully submitted, and had made so complete an apology, and presented so proper a petition.

163. Mr. Tayler was then discharged.

*The apology is as follows:

'To the Editor of the 'Englishman.'

Sir,- You are no doubt fully informed of the result of yesterday's proceedings in the matter of the charge against me of contempt of Court, for which I was arrested on the 13th instant.

Considering that the fact of my arrest was sufficient evidence that the Court held my former letters to your address to 'constitute such contempts,' I resolved, after consultation with my friends and my learned Counsel, to submit on this point to the decision of the Court; and, as I had never intended to commit, and never thought that I had committed, such contempt, but had written with the sole purpose of vindicating my character, I at once tendered, both orally and by affidavit, a full and unreserved apology both to Mr. Justice Dwarkanath Mitter and the Court at large.

But the Hon'ble the Chief Justice, in postponing the case for final orders until Saturday, suggested that I should give the same publicity to this apology as was given to my former letters In compliance with this intimation, and as my apology is in truth without reservation or stint, I shall be much obliged by your printing this letter, if possible, in your journal of to-morrow.

There is only one other point which it is desirable to mention.

The Hon'ble the Chief Justice remarked that he did not observe in my apology anything which showed that I retracted my charge against Mr. Justice Dwarkanath Mitter. In accordance with this suggestion, I beg to say that I have no hesitation whatever in retracting all such expressions and observations as may have been deemed by the Court to be improper or contemptuous: and I may observe that I had intended my apology to include such retraction.

I hope that this public expression will be satisfactory to Mr. Justice Dwarkanath Mitter, and meet the suggestion of the Hon'ble the Chief Justice.

W. TAYLER.