"for any oppressive and unwarranted act of authority by the party injured."

To a successful prosecutor on a charge of corruption three times the value of the money or property corruptly received may be awarded, and "to the party injured" damages and costs may be awarded: and not only may a Village Múnsif be mulcted for corruption, but also "the party by whom or for whom the corruption may have been practised," if privy to such corruption; in each instance in which the words are used in the section they appear to be used with reference to a party to the suit.

The Subordinate Judge had then no jurisdiction to award damages against the Village Múnsif in this case at the instance of a person who came in with a claim in respect of certain property attached by the former.

We should, moreover, have felt in any case constrained to hold that the Village Múnsif is not shown to have acted in an oppressive manner, even if his action was not warranted by law.

We must set aside the order and direct repayment to the Village Múnsif of the sum levied from him. We shall, however, allow no costs as it is stated that the Village Múnsif treated the representations of the claimant and the order of the District Múnsif with a want of due consideration.

APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Muttusámi Ayyar.

RA'MASA'MI

AGAINST

LOKANA'DA.*

1885. March 11. 1886. April 12.

Penal Code, s. 500, *Defamation—Newspaper libel—Act XXV of* 1867, *ss.* 5, 7—*Burden of proof—Statutes—*38 *Geo. III, c.* 78, *s.* 14—6 *& 7, Vict. c.* 96, *s.* 7.

On the prosecution of the editor of a newspaper for defamation under s. 500 of the Indian Penal Code by publishing a libel in his paper, an attested copy of a declaration made by the editor under s. 5 of Act XXV of 1867 to the effect that he was the printer and publisher of the newspaper, was produced in evidence by the com-

* Criminal Revision Case 438 of 1885.

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plainant. The editor having been convicted by the Magistrate, the Sessions Court on appeal quashed the conviction on the ground that there was no evidence that the editor was the writer of the libel or permitted its publication:

Held, that in the absence of proof to the contrary, the declaration was *primâ facie* proof of publication by the editor.

Held also, that it would be a sufficient answer to the charge if the editor proved that the libel was published in his absence and without his knowledge and that he had in good faith entrusted the temporary management of the newspaper during his absence to a competent person.

APPLICATION under ss. 435 and 439 of the Code of Criminal Procedure to revise the proceedings of J. A. Davies, Sessions Judge at Tanjore, in Appeal 13 of 1885 quashing the conviction of Lokanáda Nádan under s. 500 of the Indian Penal Code by Krishnasámi Ayyar, Sub-Divisional Magistrate of Tanjore.

The facts necessary for the purpose of this report are set out in the judgment of the High Court (Collins, CJ., and Muttusámi Ayyar, J.)

Bháshyam Ayyangár and *Désikáchâryar* for the complainant Rámasámi Pillai.

If a man employs an agent to publish a newspaper he is responsible criminally for any libel published by such agent.

The publication of the agent is that of his principal who must be held to intend the consequences of the act. Hawkins Pleas of the Crown, Vol. II, p. 131. Roscoe Crim. Ev., p. 977. *Queen* v. *Holbrook*,(1) *Empress of India* v. *McLeod* (2) and other cases were referred to in argument.

Lokanáda Nádan did not appear.

JUDGMENT.—On the 29th December 1884, a defamatory article appeared in the *Kshattriyanubalani*, a newspaper published once a week at Porayar in the district of Tanjore. The accused admitted that he was the Editor and Proprietor of that newspaper, and an attested copy of the declaration made by him under s. 5 of Act XXV of 1867 to the effect that he was its printer and publisher was also produced in evidence for the prosecution. The First-class Magistrate of the Tanjore Division convicted him of defamation and sentenced him to four months' simple imprisonment and to pay a fine of Rs. 100.

On appeal, the Sessions Judge set aside the conviction and acquitted the accused. The Judge agreed with the Magistrate

(1) 4 Q.B.D., 42. (2) I.L.R., 3 All., 342.

that the matter published was defamatory, and that it referred to the petitioner; but he observed that there was no evidence that the accused was its writer, and that there was no proof whatever that he was personally aware of the publication and permitted it. He further remarked that the Criminal law aimed at individual responsibility, and that in order to support a conviction of a criminal offence, it was necessary to show that there was guilty knowledge or intention. The accused stated in his defence that he was absent from Porayar in December 1884, that by his desire one Martanda Nádan managed the paper during his absence, that the defamatory article was contributed by one Náráyanasámi Pillai, the 4th witness for the defence, and that Martanda Nádan published it without the accused's knowledge or privity. The Magistrate considered that the evidence produced by the accused to prove his absence from Porayar was *not* trustworthy, that Náráyanasámi Pillai was *not* the person who wrote the defamatory matter, and that the *accused himself wrote the article or that it was written at his instigation by some one else*. The Judge did not discuss the evidence or record a distinct finding as to the weight due to it, probably on the ground that there was no evidence for the prosecution that the accused was the real publisher, or that the publication was made with his privity or knowledge. He states in his judgment that "all that is alleged is that the accused was technically the publisher for the purposes of Act XXV of 1867, not that he actually knew of the publication."

It is no doubt true that in order to sustain a conviction for defamation it must be shown that there was a publication by the accused in fact, for by section 499 of the Indian Penal Code the offence is thus defined—"Whoever by words spoken or intended to be read makes or publishes any imputation concerning any person *intending* to harm or knowing or having reason to believe that such imputation will harm the reputation of such person (except in certain specified cases) is guilty of defamation." But the Judge has apparently overlooked the provisions of section 7 of Act XXV of 1867, which enacts that "in any legal proceeding whatever, as well civil as criminal, the production of an authenticated copy of the declaration shall be held [unless the contrary be proved] to be sufficient evidence as against the person whose name shall be subscribed to such declaration that the said person was printer or publisher [according as the words of the declaration may be] of

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every portion of every periodical work, whereof the title shall correspond with the title of the periodical work mentioned in the declaration."

This Act was passed like 38 Geo. III, c. 78, s. 14, for the purpose of preventing the mischief arising from printing and publishing newspapers by persons not known, and it was intended to facilitate proceedings, civil and criminal, against the persons concerned in such publications. For this purpose, as was observed by Justice Bailey in *The King* v. *Hart* (1) with reference to the English Statute, the Act required that a declaration be made and subscribed before a Magistrate, and directed that the production of an attested copy of that declaration shall be sufficient evidence as against every person who subscribed to it, that he was the *printer* or *publisher* or *printer* and *publisher* (according as the words of the declaration may be) of the paper containing the libel, provided that its title corresponded to the title of the paper mentioned in the declaration, and provided also that the contrary was not proved.

The intention was to constitute the declaration into *primâ facie* evidence of publication and thereby to throw on the accused the burden of showing that the actual publisher of the libel was *not* the person mentioned in the declaration. The declaration was then *primâ facie* evidence of publication by the accused, and if no contrary evidence was produced, or if the contrary evidence produced by him was *not true*, as held by the Magistrate in this case, it became conclusive so as to sustain the conviction.

It was then urged for the petitioner, that it was not sufficient for the accused to show that the libel was published without his knowledge or privity, but that he must go further and prove that the publication did not also arise from want of *due care* or *caution* on his part, and our attention was called to the provisions of 6 & 7 Vict., c. 96, s. 7. It was pointed out by Lush, J., in *The Queen* v. *Holbrook*, that under the Common Law of England, the proprietor of a newspaper was criminally responsible for the publication of a libel in its columns, whether the libel was inserted with or without his knowledge, that the intention of the Legislature in passing the Statute 6 & 7 Vict. c. 96, was to mitigate the rigor of the Common Law, and to give the proprietor the benefit of the presumption that when one person employs another to do a lawful

(1) 10 East, 98.

act, he is to be taken to authorize him to do it in a lawful and not in an unlawful manner, and that the Statute declared for that purpose that it was competent to the proprietor to prove that the libel was published without his authority, consent or knowledge, that the publication did not arise from want of due care or caution on his part.

In substance, the Statute modified the grounds on which the proprietor was criminally liable for a libel published in his paper according to the Common Law of England. But we cannot hold that the provisions of that Statute are applicable to this country, and we must determine whether the accused is or is not guilty of defamation with reference to the provisions of the Indian Penal Code. We consider that it would be a sufficient answer to the charge in this country if the accused showed that he entrusted in good faith the temporary management of the newspaper to a competent person during his absence, and that the libel was published without his authority, knowledge or consent. As the Judge has however misapprehended the effect of Act XXV of 1867, we shall set aside the order of acquittal made by him and direct him to restore the appeal to his file, to consider the evidence produced by the accused and then to dispose of the appeal with reference to the foregoing observations.

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Brandt.

READE (DEFENDANT), APPELLANT,

and

KRISHNA (PLAINTIFF), RESPONDENT.*

1886. February 4. March 5.

Guardian—Custody of minor—Change of religion—Act IX of 1875, s. 2., cl. (5).

A Bráhman boy, 16 years of age, having left his father's house went to and resided in the house of a Missionary, where he embraced Christianity and was baptized.

In a suit by the father to recover possession of his son from the Missionary:

Held, that the question whether the boy was a minor, was to be decided not according to Hindú law, but by Act IX of 1875;

* Second Appeal 701 of 1885.