1881
March 28.

CRIMINAL JURISDICTION.

Before Mr. Justice Straight.

EMPRESS OF INDIA *v.* RAMANAND.

Defamation—Good faith—Act XLV of 1860 *(Penal Code), s.* 499.

C was put out of caste by a panchayat of his caste-fellows on the ground that there was an improper intimacy between him and a woman of his caste. Certain persons, members of such panchayat, circulated a letter to the members of their caste generally in which, stating that *C* and such woman had been put out of caste, and the reason for the same, and requesting the members of the caste not to receive them into their houses or to eat with them, they made certain statements applying equally to *C* or such woman. Such statements were defamatory within the meaning of s. 499 of the Indian Penal Code. *Held* that, if such persons were careless enough to use language which was applicable to *C*, they did so at their peril, and they could not escape the responsibility of having defamed *C* by saying that they intended such language to apply to such woman. *Held* also, on the question whether such persons had acted in good faith, that, looking to the character of such letter, the circumstances under which it was written, and to the fact that *C* had been put out of caste for the reason alleged, had such persons contented themselves with announcing the determination of the panchayat, and the grounds upon which such determination was based, they would have been protected; but, inasmuch as they did not so content themselves, but went further and made false and uncalled for statements regarding *C*, they had rightly been held not to have acted in good faith.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Mr. *Hill*, for the petitioner.

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), for the Crown.

STRAIGHT, J.—This is an application, under s. 297 of the Criminal Procedure Code, for revision of an order of Mr. F. Kilvert, Magistrate of the first class, passed upon the 15th May, 1880, by which he convicted the five applicants of an offence under s. 499 of the Indian Penal Code, and sentenced them to pay a fine of Rs. 50 each, or in default to be rigorously imprisoned for two months. The complainant, Chunni Lal, and the defendants were all members of a high caste of Gujrati Brahmans, who resided in the Tarái. It appears that some time in the year 1879 it was ascertained that Chunni Lal was keeping up an improper connection with a woman named Hira, the widow of a deceased member of the

1881

EMPRESS OF INDIA v. RAMANAND

brotherhood, and ultimately a panchayat was held at which it was resolved to put Chunni Lal out of caste. In order to fully effectuate their decision, the members of the panchayat drew up a circular letter for communication to the other Gujrati Brahmans of the North-West, and it is in this document that the alleged defamatory matter appears. The material portion of it is as follows:—"Now we, all members of the caste, beg to say that Chunni Lal had long been enamoured of Baiji Hira, and he used to have illicit intercourse with her: the members of the brotherhood, having seen this, remonstrated with him (or them) greatly on many occasions, but he (or they) did not mind, and it is said she has become pregnant, and the mohalla chaukidar has given information at the police-station, and he (or she or they) is (or are) accused in the case, and the Government is the prosecutor." The letter goes on to say that Chunni Lal and Hira have both been put out of caste, and the brethren are warned that should "either of these outcastes" come "to their villages," they are not "to mess them." Of the defamatory character of this document there can be no doubt, and it afforded ample "*primâ facie*" material for a charge under s. 499 of the Penal Code. But beyond the imputations it might be naturally taken to convey, the complainant, Chunni Lal, maintained that the passage concluding with the words "and the Government is the prosecutor" bore the construction that he had been accused by the police of having caused the woman Hira to procure abortion, and that so serious was the matter that the Government had taken it in hand. The defendants did not deny that they had signed the incriminated letter, but their defence seems to have been that the statements in it alleging the illicit connection, and that Chunni Lal had been put out of caste, were true in substance and in fact, and that they were made in good faith and for the purpose of informing the brotherhood of a matter in which all the members had a common interest. With regard to that part of it in which the "chaukidar" is mentioned as having given information, they alleged that it had no reference to the complainant, Chunni Lal, but was solely and entirely applicable to the woman Hira. The Magistrate, however, was of opinion that all the statements were made concerning the complainant himself, that they were not true, and that they had not been made in good faith. With the first of these conclu-

1881

EMPRESS OF INDIA v. AMANAND.

sions I am not prepared to find fault. The document is open to the construction that the Magistrate places on it; and I agree with him that it would be straining matters to infer, as asked by the complainant, that it goes the actual length of alleging that a charge of abortion had been made against him. At the same time, assuming him to be the person referred to, it does assert that he had done something in reference to the woman that had been made the subject-matter of a charge, and that a prosecution had been undertaken. If the defendants were careless enough to use language that an ordinary reader might reasonably interpret to reflect upon the complainant, and lead to the inference that he had done something punishable by law, they did so at their peril, and they cannot now escape responsibility by saying that they intended it to apply to another person. I concur therefore with the Magistrate that the letter did make it appear that Chunni Lal had been guilty of conduct in relation with the woman Hira that had resulted in a complaint to the police and steps being taken thereon. With regard to the second conclusion, I do not feel myself competent to interfere in revision. The Magistrate, as I gather from his judgment, finds as fact that no complaint was ever made at the police-station as to Chunni Lal, nor was Government the prosecutor of any complaint against him. Upon these findings the defendants were obviously not entitled to the protection of *Exception* 1, s. 499 of the Penal Code. But now I come to the final conclusion of the Magistrate, namely, that the defendants had not acted in good faith, and as to this I cannot say that the case is altogether without difficulty. Did the defendants make the imputations contained in the circular letter and communicate them to the other members of their caste "*bonâ fide*" and for the purpose of giving information upon a matter of importance and interest common to all the brotherhood? The character of the document itself, the circumstances under which it was written, and the fact that Chunni Lal had been put out of caste, are certainly strongly in favour of their good faith, and had they contented themselves with announcing the determination of the panchayat and the grounds upon which it was based, I think they would have been protected. But they were not satisfied to do this, but travelled into other matters, the falsity of which in point of fact negatived the presumption to which they would otherwise

1881

EMPRESS INDIA v. RAMANAN

have been entitled, namely, that they had acted in good faith, that is, with due care and caution. They should not have insinuated against Chunni Lal that he had committed some offence with regard to the woman, cognizable by the authorities, without first satisfying themselves that such was actually the case, for information was readily accessible had they chosen to make inquiries at the police-station. Moreover this part of the letter was wholly unnecessary, for the occasion did not call for any statement of the kind, and it was amply sufficient for the object they had in view to inform the brotherhood of the decision of the panchayat and of the circumstances that had led to it. I think, therefore, that the Magistrate rightly held the defendants to have been wanting in that care and caution, which had they exercised it would have established their good faith, and so lost the protection they would otherwise have had. Mr. Hill for the applicants raised a point upon the question of publication, but having regard to the remarks made in the Magistrate's judgment, and upon consideration of the statements made by them when upon their trial, I think this is sufficiently proved. In the other points urged for revision I see no force. The application must therefore, upon the grounds upon which it is asked, be refused.

But I think it right to say upon the question of punishment that, while the defendants were properly convicted, the extent of their moral turpitude was the failure to exercise that reasonable amount of care and caution which would have established their good faith in point of law. No Court could wish to interfere with those domestic rules and laws which regulate and control the relations between the members of a caste. On the contrary, the tendency would rather be to countenance and protect them. The defendants in the present case no doubt meant for the best, but they allowed themselves to be betrayed into statements and expressions which upon examination it turns out they can neither substantiate nor excuse. I do not think there was a deliberate intention upon their parts to vilify Chunni Lal, and it seemed to me that the Magistrate rightly measured their culpablity when he inflicted a fine and not imprisonment by way of punishment. But it seems to me that the justice of the case would be met by a lesser penalty than

1881

EMPRESS OF INDIA v. RAMANAND.

fifty rupees, and I therefore reduce the amount of the fine to twenty rupees each, and the excess realized will be handed back. The record may be returned.

1881
March 29.

APPELLATE CIVIL.

Before Mr. Justice Spankie and Mr. Justice Oldfield.

TAJAMMUL HUSAIN (DEFENDANT) *v.* UDA AND ANOTHER (PLAINTIFFS).*

Pre-emption—Right of pre-emptor—Sale-contract—Purchase-money.

A pre-emptor is entitled to all the benefit which the vendee takes under the contract of sale. *Held* therefore, where a certain sum was fixed as the price of the property, and such sum was paid by the vendee, but it was subsequently agreed between him and the vendor, as part of the sale-contract, that the vendee should recover for his own benefit certain moneys due to the vendor at the time of the sale, and the vendee recovered such moneys, that the pre-emptor was entitled to a deduction of the amount of such moneys from the sum origially fixed as the price of the property.

The facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Babu *Oprokash Chandar Mukarji*, for the appellant.

Babu *Burodha Prasad Ghose*, for the respondents.

The judgment of the Court (SPANKIE, J., and OLDFIELD, J.,) was delivered by

OLDFIELD, J.—The plaintiff sues to recover by right of pre-emption property sold to appellant on payment of Rs. 13,866-6-6. The lower appellate Court decreed the claim, and the only question before us is the sum which appellant should receive from plaintiff. It has been found, and is not disputed, that the price of the property was fixed at Rs. 14,483-0-0, and appellant paid that sum to the vendor; but it was subsequently agreed between him and the vendor, as part of the sale-contract, that appellant should recover for his own benefit certain sums due on the estate to the vendor at the time of sale, namely, Rs. 209-8-6, compensation for land received

*First Appeal, No. 121 of 1880, from a decree of Maulvi Nasir Ali Khan, Subordinate Judge of Saháranpur, dated the 24th June, 1880.