1890.

IN THE MATTER OF THE LAND ACQUISITION ACT X OF 1870; MUNJI KHETSEY.

The market value at the time of awarding compensation may fairly be taken to mean "at the time when proceedings under the Act are taken", as opposed to its known market value in the past and its probable market value in the future; otherwise in the same proceeding there might be three different values determined—the value at the time the Collector awards; the value at the time the Division Bench awards; and the value at the time the Appellate Court awards.

The total value of the land taken from the claimant was calculated to amount to Rs. 17,672, and Rs 2,650-12-9 were awarded him as compensation at the rate of 15 per cent. for compulsory acquisition, making a total of Rs. 20,322-12-9. An award for this amount was made in favour of the claimant, with the costs of the reference, and interest from the date of taking possession.

Attorney for the Collector:—Mr. *Little*, Government Solicitor.

Attorney for the claimant:—Messrs. *Chitnis, Motilál and Malvi.*

APPELLATE CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

1890.
September 24.

QUEEN-EMPRESS v. GIRJA'SHANKAR KA'SHIRA'M.*

Defamation—Publication—Publication of defamatory matter in a newspaper—Responsibility of the editor and proprietor of a newspaper—Indian Penal Code (Act XLV of 1860), Sec. 500.

The editor and proprietor of a newspaper, who prints a paper containing a defamatory article in one city and permits copies of the paper to be sent by the printer to persons in another city, is responsible, in the absence of proof to the contrary, for the publication of the defamatory article in that city.

THIS was an appeal by the Government of Bombay against an order of acquittal passed by Ráo Sáheb Jethálál Varajrái, City Magistrate (First Class) at Ahmedabad.

The accused Girjáshankar Káshirám was the editor and proprietor of a vernacular newspaper published in Bombay and called the "*Rájá-bhakta Swadharma Nishta.*"

In the issue of this paper of the 7th January, 1890, there appeared an article entitled "A little picture of the sufferings

*Criminal Appeal, No. 244 of 1890.

of the Bhávnagar Subjects," which contained certain defamatory matters reflecting on the conduct and character of the complainant, Sadáshankar Manishankar, a police officer of the Bhávnagar State. The principal imputations made against the complainant were (1) that he was an utterly incompetent officer; (2) that he was corrupt; and (3) that his conduct was immoral.

For the publication of this article the accused was charged with defamation, under section 500 of the Indian Penal Code (Act XLV of 1860), before the First Class Magistrate of Ahmedabad.

It was proved at the trial that copies of the paper containing the defamatory article were sent from the press where it was published to certain persons in Ahmedabad.

The Magistrate acquitted the accused, on the ground that he had published the article in question with due care and caution and for the public good. His reasons are stated in the following extract from his judgment:—

"This said matters published in the said newspaper are, no doubt, apparently defamatory. Any reasonable being on reading the article would at once so declare it and without any qualification. However, the fact that they are defamatory has been duly proved. Their publication within the city of Ahmedabad, *i.e.*, within the jurisdiction of this Court, has also been sufficiently proved. The point that there remains to be considered is whether the accused published the imputation intending to harm, or knowing or having reason to believe that the same would harm the reputation of the complainant. In deciding this point, it should be borne in mind that the accused has no malice against the complainant. This fact has been admitted by the latter in his examination. Several cases have been cited on behalf of the prosecution to show that it is malice in law where a statement is deliberately false in fact and injurious to the character of another. These cases, however, have reference to suits for damages. In connection with this point may be read Explanation 4 to section 499, Indian Penal Code. It runs as under: 'No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste, or of his calling, &c.' No evidence has been produced to prove that the complainant actually suffered in his reputation both as a public officer and a private gentleman. But the case of *Queen* v. *Thákur Dass* (1) may be cited, in which it was ruled that 'to sustain a charge of defamation it is not necessary to prove that the complainant actually suffered directly or indirectly from the scandalous imputation alleged; it is sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant.' No such ruling of the

(1) 6 N. W. P. H. C. Rep., 86.

1890.

QUEEN-EMPRESS v. GIRJÁ-SHANKAR KÁSHIRÁM.

Bombay High Court is forthcoming, although I tried to find out one. Does it not clash with the express provision of the law as contained in the said explanation? I would humbly think in the affirmative. If it was considered sufficient to show that the accused intended, &c., that the imputation made would harm the reputation of the complainant, there was hardly any necessity for providing explanation 4. In this case, if the complainant has suffered anything at all, he has suffered in reputation in the limits of the Bhávnagar State; as he is a native and servant of that State, and if he has not suffered within British India, the publication of the scandalous matter is no offence.

"The accused has tried to show that he published the matter after due care and attention. He produces four witnesses, one of whom, who is the principal and whose name is Mulchand Trikam, has it seems turned round and become hostile to him to prove his allegation. And I would think that he has succeeded in showing his good faith. From Mulchand Trikam he received a communication dated 18th December, 1889, containing the scandalous imputations. Instead of publishing them at once, he made certain inquiries through witnesses Nos. 13, 14, 15, and found that there were grounds for complaints against the complainant. The Court has nothing before it to disbelieve the statements made by these witnesses. There is, therefore, no reason why they should not be believed. It appears that they made their enquiries through some Mahua merchants and brokers at Bombay and communicated the result to the accused. It was after this that the accused published the matters contained in the communication. Mulchand admits to have written the letter containing the imputations. The letter (Exhibit C), dated 18th December, 1889, should have reached accused at Bombay on 22nd or 23rd idem, and the contents were not published by him until 7th January following, *i.e.*, until after a fortnight. This fact, together with the evidence of the said three witnesses, sufficiently leads one to the inference that accused made all possible enquiries to satisfy himself that there was truth in the contents received by him. Here I would quote a ruling of the Calcutta High Court—*In the matter of the petition of Shibo Prosad Pandah*(1). It was therein decided that 'in dealing with the question of good faith, the proper point to be decided is not whether the allegations put forward by the accused in support of the defamation are in substance true, but whether he was informed and had good reason after due care and attention to believe that the allegations were true.'

"Under these circumstances of the case, I am of opinion that the accused falls within the exceptions 8 and 9 to section 499, Indian Penal Code. He made certain imputation in good faith on the character of the complainant before his superior and for the public good."

Against this order of acquittal the Government of Bombay appealed to the High Court.

Macpherson, Acting Advocate General (with him *Shántárám Náráyan*) for the Crown.

Mancherji Mervánji Bhávnagri for the complainant.

(1) I. L. R., Calc., 124.

Macpherson :—The offence consists in the publication of the defamatory article. The newspaper is published in Bombay. Copies of the paper were sent to persons living in Ahmedabad. That constitutes a publication of the paper in that city. It is not necessary to prove that the paper was sold there : Odger on Slander, p. 559.

Branson (with him *Chimanlál Harilál*) for the accused :—Unless it can be shown that the accused published the paper at Ahmedabad, the order of acquittal should be upheld. There is nothing to show that the paper was sold at Ahmedabad. The persons who are alleged to have received copies of the paper there are not shown to have read them. The accused is the editor and not proprietor of the paper. If he had posted the paper to Ahmedabad, the post office would be acting as his agent, and there would be a publication of the paper there. But if any one else sent the paper there, that would not be a publication—*Reg.* v. *Kálidás*(1); *Queen Empress* v. *Taki Husain*(2).

BIRDWOOD, J. :—The accused is shown by the evidence to be the editor and proprietor of the newspaper in which the alleged defamatory statement was printed. This newspaper is published in Bombay ; but, since its issue, copies have been sent from the press at which it is published to certain persons in Ahmedabad. It must be presumed that these copies have been sent on the accused's account. He is, therefore, responsible for the circulation in Ahmedabad of such copies of the paper as have been so sent. In the absence of proof to the contrary, it cannot be held that the persons connected with the press have acted in the matter otherwise than in pursuance of instructions received from the accused himself. There was, therefore, a publication by the accused in Ahmedabad.

The statement in question is clearly defamatory, and we are of opinion that the accused has failed to prove that he acted in good faith, *i.e.*, with due care and attention in making it. The information on which he acted was far too vague to justify the specific and serious imputations made by him on the character of the complainant. We, therefore, reverse the order of acquittal

(1) Calc. W. R., 44 Cr. Rul. (2) I. L. R., 7 All., 205, at p. 212.

1890.

QUEEN-EMPRESS v. GIRJÁ-SHANKAR KA'SHIRA'M.

made by the Magistrate and convict the accused Girjáshankar Káshirám of the offence of defamation punishable under section 500 of the Indian Penal Code, with which he was charged, and we sentence him to pay a fine of Rs. 500, or, in default of payment of the fine, to suffer simple imprisonment for six months.

Order of acquittal reversed.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

1890. *September* 29.

VISHVANA'TH CHARDU NA'IK, (ORIGINAL PLAINTIFF), APPELLANT, *v.* SUBRA'YA SHIVA'PA' SHETTI AND ANOTHER, (ORIGINAL DEFENDANTS), RESPONDENTS.*

Civil Procedure Code (Act XIV of 1882), Sec. 244—"Party"—"Representative of a party"—Auction-purchaser—Order in summary inquiry not binding on auction-purchaser.

A purchaser at a Court sale is not a party, or the representative of a party, within the meaning of section 244 of the Code of Civil Procedure (Act XIV of 1882). He is, therefore, not bound by any order in the miscellaneous inquiry under section 280, 281, or 282 of the Code. Nor is he bound by the specifications contained in the proclamation of sale of the claims of intervenors.

Certain property was attached in execution of a decree. The defendants intervened, and objected to the attachment, on the ground that they held the property on permanent tenancy. Their objection was allowed, and the Court made an order, directing the property to be sold, subject to the defendants' rights. In the proclamation of sale, however, it was stated that the Court did not guarantee the title of the intervenors. The plaintiff purchased the property at the Court-sale. He then sued to eject the defendants. The defendants pleaded that the plaintiff had purchased, subject to their rights as permanent tenants. Both the lower Courts rejected the plaintiff's claim, on the ground that he was bound by the order in the miscellaneous inquiry, which had become conclusive by reason of his having omitted to sue within one year from the date of the order.

Held, reversing the lower Court's decision, that the order in the miscellaneous inquiry was not binding on the plaintiff as an auction-purchaser.

SECOND appeal from the decision of G. McCorkell, District Judge of Kánara, in Appeal No. 52 of 1889.

The lands in dispute originally belonged to one Kázi Hazrat Sáheb, who mortgaged them to Vithobá Anant Pái. Vithobá

* Second Appeal, No. 945 of 1889.